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TRIBAL GOVERNMENTS AND LAW AND ORDER

STATE OF MONTANA

DEPARTMENT OF INDIAN AFFAIRS
HELENA, MONTANA

K. W. BERGAN, COORDINATOR

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A STUDY OF THE PROBLEMS ARISING FROM THE
TRANSFER OF LAW AND ORDER JURISDICTION
ON INDIAN RESERVATIONS TO STATE GOVERNMENTS

The Northwest Ordinance preceded the adoption of the Constitution of the United States by two years. The United States had adopted as one of its set of principles, the Declaration of Independence and it crystallized into what later became the Bill of Rights. The long evolution of legislation and practice in England which resulted in the concept, a human being is an integer, a unit, a being, a personality, an individual, and the best interests of society demand the opportunity for the best development of that individual.

The Northwest Ordinance undertook to protect the rights of the Indian both collectively and individually in the soil and the land which they occupied. The Northwest Ordinance was the governing document, the constitution you might call it, of all the western territory between the Mississippi River and the Appalachian Mountains and North of the Ohio River. (Mr. Felix S. Cohen in his analysis in Legal Conscience, "Original Indian Title")

The logic which is set forth in the Northwest Ordinance was not original with the United States Congress. The protection of Indian rights to their lands came to France from Spain when North American lands were transferred. The Spanish people obtained this philosophy from a statement of principles issued by the Vatican for dealing with Indian problems back in 1580. History shows that it has been necessary to enact ordinances quite often to protect Indian land rights. The old Spanish law placed more severe penalties against Spanish intrusion of Indian rights than for similar intrusion against their own people. The French adopted the same approach to Indian land problems and they became a part of the law of the United States through the Louisana Purchase Treaty.

There are 400 treaties between the United States Government and Indian tribes. There are 4000 federal statutes to apply these treaties and made administrative decisions in regard to those treaties. The Spanish influence determines many of the decisions in regard to Indian rights and Indian lands and many of the laws enacted in regard to Indian rights. The result is a strange patchwork for the administration of Indian lands. This Spanish influence is very evident in the treaty with France for the purchase of Louisana Territory a portion of which reads as follows:

Treaty of April 30, 1803, with France for the cession of Louisana Territory to the United States . . . . . .

ARTICLE III The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess.

ARTICLE IV The United States Promises to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians until by mutual consent of the United States and

the said tribes or nations, other suitable articles shall have been agreed upon. . . . . .
Indian law is definitely a part of International Laws and has been indicated by a brief study of the Louisana Purchase Treaty. It is further emphasized in the treaty of Guadalupe Hidalgo, with Mexico (Treaty, February 2, 1848 9 Stat. 922)

ARTICLE VIII The Mexicans now established in territories previously belonging to Mexico and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove to the Mexican republic, retaining the property which they now possess in the said territories, or disposing thereof, and removing the proceeds whenever they please, without being subjected, on this account; to any contribution tax, or charge whatever to the enjoyment of all the rights of citizens of the United States according to the principles of the constitution: and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

Those who prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of the citizens of the United States.

"In the said territories property of every kind, now belonging to the Mexicans, not established there shall be inviolably respected."

ARTICLE IX Mexicans, who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged by the Congress of the United States.)

A very significant and important decision was rendered by the Supreme Court of the State of Montana on May 12, 1954, in case No. 9410. This case dealt with the jurisdiction of the State of Montana Courts on Indian Reservations in the state. An enrolled and allotted Indian by the name of William L. Bokas was tried in the District Court of Roosevelt County for the forgery of a check in the amount of $7.50. The case was appealed to the Supreme Court for the supervisory writ by two young lady attorneys who had recently graduated from Montana State University Law School Their names were Miss May E. Hughes who was practicing law at Poplar, Montana on the Fort Peck Reservation and Miss Terese Lowney, who was practicing law at Glendive, Montana. These two young ladies made history when they won their appeal to the Supreme Court.

The appeal brought out the following facts in the case. William L. Bokas lived within the boundaries of the Fort Peck Indian Reservation. He owned an allotment of land which was held in trust for him by the United States Covernment. The alleged crime was committed at Poplar, Montana, which is a town within the boundaries of the Fort Peck Indian Reservation. This reservation is administered through a treaty between the Sioux-Assiniboine Indian Tribes and the United States Government which was drawn in 1888. This treaty provided that all criminal and civil jurisdiction of Indian people on the reservation, rested with the United States Government. To begin with, the reservations were administered by the United States Army and military law. Later the Bureau of Indian Affairs assumed all jurisdiction over civil and criminal matters under law from the United States Congress.

In recent years, criminal jurisdiction has been administered on Indian reservations under Sec. 1153 of Title 18 also known as the 11 major Crimes law which reserves for the United States Government total jurisdiction for the 11 major crimes by Indian people within the boundaries of an Indian Reservation or Indian country. Other crimes very often classed as misdemeanors are reserved for the tribal council or local reservation jurisdiction.

The Montana state jurisdiction on Indian Reservations is controlled by the Enabling Act which provided for the Constitution in the State of Montana. This act specifically states that the Constitution does not apply to military reservations nor Indian Reservations as follows:

THE ENABLING ACT FOR MONTANA

An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments to be admitted into the Union on equal footing with the original states, and to make donations of public lands to such states.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

#1,2, 3 and 4, First----

Second, That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States;---"

The Enabling Act may be seen as an Act designed for the times. To enable the states to organize, they were granted certain sections of the public domain. The Federal Government recognized its obligation to stand between the native Indian population and the oncoming homesteaders and settlers. The native Indian population had been, to a very large degree, divested of its former means of livelihood and rendered dependent upon the Federal Government for its subsistence. Many of the Indians of this section of the country were still very resentful and hostile. The homesteaders and settlers were seen as important in the expansion and life of the nation. They were hungry for land, whether the land was reserved to Indians or not. If the Federal Government had not intervened in behalf of the Indian and peace and order there would have been continuing hostilities and the Indian would have been further exploited. It was in this context that the Federal Government in writing the Enabling Act set aside the Indian and the reservation lands from the application of State law. It was not that the Federal Government assumed all of the authorities in relation to Indians on reservations which otherwise were the State's. There were whole areas of law which, it came to be recognized, remained with the tribes and did not pass to the Federal Government. This concept of tribal sovereignty, the right of a tribe to govern its own internal affairs, was described in Worcester v. Georgia in 1832. This doctrine was seen in the one extreme in the case titled ex parte Crow Dog 109 U.S. 556. The effect was so repugnant to the sensibilities of people that the Congress acted in 1885, 23 Stat. 385, to assume jurisdiction over certain crimes if committed among Indians on the reservation. Thus, the powers of tribal sovereignty were curbed to this extent. This law now appears in 18 U.S.C.

1153, and in addition to the original crimes of murder, manslaughter, rape, assault with intent to kill, burglary, larceny, and arson, it includes robbery, incest and assault with a dangerous weapon. Other such laws include one covering embezzlement from tribal organizations was added in 1956, and the Switchblade Knife Act, P.L. 623, approved August 12, 1958.

More recently there was the Iron Crow, et al. v. the Oglala Sioux tribe 321 Fed. 2d 39, which in a criminal case, upheld the validity of the Indian court as differentiated from the State court system, or the Federal court system. Later, another case, Lee v Williams, recognized the validity of the Court of Indian Offenses in a civil matter.

In a sense the pendulum has swung from a willingness to allow the Indian tribes on their reservations to rule themselves according to their own custom, even to the extent of murder and denial of due process, to a taking over of regulation of certain crimes by the Federal Government, and later recognition of Indian courts as valid courts of law.

JURISDICTION - Criminal Offenses

For the perspective of what is referred to as the jurisdictional problem, perhaps it is appropriate to consider jurisdictional lines generally accepted as pertaining to the enforcement and application of criminal law, then proceed to consideration of some special areas of concern.

It is in the field of criminal law in which there is perhaps the most common agreement as to where the jurisdictional lines are. This is probably because the tribes, and the states and the Bureau of Indian Affairs have been dealing with these problems over an extended time and because there has been relatively little change in the procedures and means we use to deal with these problems.

Generally it can be said that the right and responsibility for enforcing the law among Indians on the reservation has remained with the tribes. The Jurisdiction of the Indian court extends to Indians only and to the boundaries of the reservation. The State courts have jurisdiction over Indians and non-Indians alike when the offense is committed off the reservation. Its (State) authority extends only to the boundaries of the reservation when Indians are involved. It reaches onto the reservation where non-Indians are involved. The tribes and States or counties offer reciprocal services in apprehending fugitives or in serving process. The Federal Government on its part has jurisdiction in certain offenses involving federal property, interstate commerce, mail, etc. where Indians as well as non-Indians on or off the reservation are involved. Add to this the fact that by Congressional action the Federal Government may take jurisdiction when certain specified crimes have been committed or when crimes by Indians against non-Indians or by non-Indians against Indians on the reservation are involved.

In this connection, Mr. William Benge, Chief, Branch of Law and Order said before the National Congress of American Indians, December 15, 1959: "Many tribes have seen fit to abolish Indian custom marriage and divorce among tribal members and to require the members to comply with the laws of the State in such matters. Resolutions or ordinances by a tribe in this respect have been said simply to be a divestment of the tribal court of the power to act in relation to marriage and divorce.

Until recent years no question has been raised as to the authority of some State courts to act with respect to Indian marriages and divorces when the parties come before the courts on their own motion. It is becoming increasingly apparent, however, that this is a matter of grave concern to both the states and the tribes because two recent court decisions have expressed the direct view that a State court is without jurisdiction to grant a divorce where both parties to the action are Indians residing on a reservation." (White v District Court of Montezuma County, Colorado, and Jim v Jim in Yakima County, Washington. Neither was then reported.)

The eleven major crimes are murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, robbery, burglary, larceny, tresspass.

The federal government and the federal courts have assumed jurisdiction of the above crimes. The U.S. Senate Civil Rights Committee has been requested to initiate legislation which would make aggravated assault a federal crime. The past interpretation has been that assault was a tribal offense if the man was not killed in the fracas. Some of the fights have resulted in broken bones and crippled for life without any serious punishment because no competent court of law had jurisdiction. This new proposal if enacted would place aggravated assault under the jurisdiction of the federal courts.

Law and order on Indian reservations was originally based on Indian custom and tribal law. It was commonly called home rule. As the non-Indian settled on reservations problems arose in the administration of affairs and the only limitations of the early days were prescribed by Congress. The status of the reservations were similar to that of counties, states and towns and were integral parts of the governmental structure of the nation. The roots of this government lie in international law, treaties of the national government and Supreme Court decisions. Chief Justice John Marshall recognized them as distinct independent and separate political communities. Congress has the authority to abolish tribal government by law but it has never done se except by treaty, mutual agreement or by plebiscite. The new termination legislation however, gives Congress more power and has changed the old policy.

Congress controls the enabling act and P.L. 280-83rd Congress, Chapter 505 First Session--H.R. 1063 grants state criminal and civil jurisdiction over Indians in Indian country as follows:

Section 6 says: "Not withstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any state to amend where necessary, their state constitution of existing statutes, as the case may be, to remove any legal impediment to the assumption of criminal or civil jurisdiction in accordance with the provisions of this Act; Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any State until the people thereof have appropriately amended their constitutions or statutes as the case may be."

Section 7: "The consent of the United States is hereby given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both as provided for in this Act, to assume jurisdiction at such time and such manner as the people of

the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

The Montana Supreme Court opinion written by Justice Bottomly held that no Montana Court had jurisdiction over enrolled and allotted Indian people residing on tax-exempt Indian lands on a reservation until such jurisdiction had been granted by legislature. This lack of jurisdiction by Montana state courts applies only to Indian people with legal residence within the boundaries of an Indian reservation or in Indian country. The Tribal jurisdiction over its own law and order comes from early United States Supreme Court Opinions that Indian people were self governing. The early courts held that an Indian tribe was a distinct independent, political body possessing all the powers of self government of any sovereignity except those powers that have been extinguished by federal law. Any repeal of any tribal powers can be accomplished only by Congressional statute or treaty. The public is not generally aware that Civil and Criminal law, including questions of tribal membership, tribal government, tribal property, domestic relationship and inheritance are controlled by tribal authorities instead of state law.

The Indian Reorganization Act of 1933 has changed the outlook of the federal government. The Indian people are encouraged to participate in their own government and are developing increased skill in democratically controlled administration of their own affairs. They are borrowing many of the techniques used in non-Indian society which seem meaningful to them and the progress made in the ability to govern themselves during the past 33 years is commendable and remarkable among many of the tribes and reservations. The transition from federal control to state control is beginning to take form and a trend is becoming evident.

Federal restriction over jurisdiction never has existed in the State of Oklahoma where there are no reservations, as such, and all legal jurisdiction is under state law and in state courts. During the year 1953, the states of California, Wisconsin, Minnesota, Nebraska and Oregon also accepted state jurisdiction for Indian people. The area of greatest benefit to Indian people from state jurisdiction is in state records and control over marriage, divorce, adoption of children and regulated foster home care. Quite often State courts hold that marriage under Indian custom is not legally binding. There are no federal laws covering marriage and this accounts for many broken marriages among Indian people. The same holds true in regard to divorce. There are no federal divorce laws. Divorce in a state court by Indian people with legal residence on an Indian reservation would not have a good legal foundation if contested in court. The Federal government does not have any legal framework for adoption procedure. For three years the parents of a Blackfeet boy have tried to arrange for an adoption of a little boy through Montana courts but had no success until both families moved away from tax-exempt lands on Indian reservations and off the reservation before any state court would accept jurisdiction.

The most valuable portion of state law in marriage, divorce and adoption is the official record that is kept on the state level. Recently the Office of the Coordinator was called upon to provide the official date of birth for a lady in California. She claimed Indian blood and birth in Montana. This record was necessary to obtain welfare and hospitalization in California. There was no record available on the Flathead Reservation and no record in the State Bureau of Vital Statistics.

Dozens of problems arise each year because of the lack of adequate record keeping for Indian people on reservations.

The statement has been made by Attorneys in Indian country and church personnel that this lack of legal jurisdiction over marriage, divorce and adoption contributes a great deal to the lack of sanctity in marriage among some of our Indian people. Divorce is sometimes arranged through tribal custom so that the mother may draw A.D.C. aid for children.

An Indian Treaty is on the same level in law as the Constitution of the United States. The following decision from the United States Court of Appeals is a good illustration of the tremendous importance of an Indian Treaty in Indian law: Federal Reporter, Volume 272, page 131--Native American Church of North America vs. Navajo Tribal Council. No. 6146 November 17, 1959.

This case was an action to enjoin enforcement of an ordinance by the Navajo Tribal Council making it an offense to introduce Peyote into Navajo country. A bean known as peyote is used by the Plaintiff Church in connection with and as part of the religious ceremonies. The United States District Court for the District of New Mexico, Waldo H. Rogers, Jr. dismissed cause of action and plaintiff appealed the Court of Appeals, Huxman Circuit Judge, held that in the absence of constitutional provision or any law of Congress making first amendment application to Indian nations Federal Court did not have jurisdiction of tribal laws or regulations even through they might have an impact to some extent on forms of religious worship.

Felix Cohen in his Handbook on Indian law, page 122 sums up the law as follows:

1. An Indian tribe possesses in the first instance, all the power of any sovereign state.

2. Conquest renders the tribe subject to legislative power of the United States, and, in substance, terminates the external powers of sovereignty of the Tribe, e. g. its powers to enter into treaties with foreign nations, but does not affect the internal sovereignty of the tribe, i. e. its powers of self government.

3. These powers are subject to qualification by treaties and by express legislation by Congress, but save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government."

The significance of this Court of Appeals Opinion becomes more apparent when State Law and Order enters into the problem. Indian people hesitate to give up this powerful position which they hold in the United States society. They do not fully realize however, their responsibility when they seek to protect this powerful position. They must maintain a standard of society which is acceptable. This probably is the greatest weakness in the Indian position on law and order. The trend in modern society requires that Indian people conform to reasonable acceptable community standards of law and order. The position of isolation of people of Indian blood is gradually disappearing and the process of integration is progressing gradually in all areas. This process of integration includes living under a system of law and order which is uniform. Any time that there is segregation in an area like law and order the attitude of segregation spreads into other areas. Segregation always sows the seeds of

discrimination and racial problems. These are problems which will confront the Indian people in the future in areas of law and order.

Juvenile delinquency is being recognized as a major problem in our newspapers, our current magazines and by our schools. The growth has been so rapid and so alarming that the problem has been called to the attention of our Congress. The F.B.I. in its reports to the people emphasized the alarming growth of teenage crime and the trend in this direction. Montana legislators recognized the overall problem in House Joint Memorial No. 10 during the 34th legislative session of 1955. The Congressional committees investigated juvenile delinquency on Indian reservations all over the United States during the summer of 1955. (S.Res.#62) A report on these hearings was published by the 84th Congress, 1st Session. Some hearings were held in Great Falls with Senator Wm. Langer as Chairman, During the month of August, 1955. The general conclusion of the 1,000 pages of testimony emphasizes that the juvenile problem is common to all reservations. To quote a few of the items of testimony (page 52) Mr. Peter Chumbris, Assoc. Counsel of the Sub-Committee of Judiciary, U.S. Senate, "We found in our testimony in North Dakota, which is inserted in the record, Exhibit No. 4 which shows several offenses, specifically, non-support, adultery and unlawful cohabitation, which in and of themselves have a material effect on youth."

From testimony of Mr. Pat Nelson, Special Officer of the Navajo Reservation page 93 of the above report: "As a corrective measure in 30 of the 73 cases, due to lack of court, such as an industrial school, available for commitment of a child, where there are no facilities to keep them, the children are sent back to their own home."

Now, there should be some place where they can be sent, where they can be removed from the environment that has brought about the delinquency. Half of these 73 cases were resolved by sending these children to various off-reservation boarding schools."

"Now, of those 40 cases, there have been 2 or 3 cases where it was reported back to the court, and the law and order officials on the reservation, that there was further difficulty with the child at the school."

"Now, as to the children's behavoir when they are away from the reservation, it is my understanding that they are amenable to the laws and systems of handling juveniles at the places where they live, in the county and State they are living in, where they are attending school. There has been no testimony as of this date relating to our records with the county and State officials, where these children are resident school children."

STATE OF NORTH DAKOTA

House Concurrent Resolution

(Rhode, Hofstrand, Fine, Thompson of McLean, Solvert, Mottet, Beede)

A concurrent resolution relating to Law Enforcement problems upon Indian Reservations

Whereas Public Law 280 has authorized the various States of the Union, including North Dakota, to assume criminal and civil jurisdiction in Indian Country within their boundaries by appropriate resolutions or Constitutional amendments, and

Whereas no provision is now made whereby the Federal Government will reimburse States and local political subdivisions for the necessary

expenditures upon the assumption of such jurisdiction over territory under the absolute control of the Congress of the United States; and

Whereas the State of North Dakota is desirous of seeing that Indian people within boundaries receive the same impartial protection of effective law enforcement as is enjoyed by non-Indian residents; and

Whereas a recent investigation by the Senate Subcommittee on Juvenile Delinquency has disclosed and made public the deplorable lack of effective law enforcement in said Indian Country; and

Whereas the solution of said problem and the improvement of the conditions of said residents of said Indian country requires that adequate provisions be made for the reimbursement of State and political subdivisions before the assumption of said jurisdiction; Now, therefore, be it

Resolved by the House of Representatives of the State of North Dakota, the Senate concurring therein, that the North Dakota delegation in Congress, working with the delegations of other States having Indian population, is hereby urged and requested to provide a means whereby it will be feasible for the State of North Dakota to offer its facilities for the correction of the presently existing deplorable conditions;

That the legislative research committee is hereby authorized and directed to study such matters and to appoint a subcommittee to give detailed consideration to the financial aspects of such readjustment of historic responsibility and such subcommittee is hereby authorized to confer with the executive and legislative branches of the Federal government in arriving at an equitable solution to such problems, and the legislative research committee is further directed, upon the completion of such study and said conferences, to publish its finding and recommendations, and to make its report to the Thirty-Fifth Legislative Assembly in such form as it may deem expedient; be it further

Resolved, that copies of this resolution be forwarded to each member of the North Dakota Congressional delegation, to the Secretary of the Interior, and to all other persons interested in said matter.

K.A. Fitch, Speaker of the House
Kenneth L. Morgan, Chief Clerk, House
C.P. Kahl, President of the Senate
Edward Leno, Secretary " "

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NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE

State Capitol, Bismarck, March 9, 1955

Juvenile Delinquency Subcommittee
Committee on the Judiciary, United States Senate
Washington, D. C.

Gentlemen: The North Dakota Legislative Research Committee regrets that it will be unable to have representatives present at the hearing before the Juvenile Delinquency Subcommittee on March 11, 1955, because of the press of legislative business in the closing days of the present biennial legislative session. It does, however, wish to express to the Subcommittee on Juvenile Delinquency the policy of the legislative assembly in regard to law enforcement on Indian lands.

Enclosed herewith is a copy of House Concurrent Resolution Q-1 which was passed by the 34th Legislative Assembly of the State of North Dakota. You will note that the resolution expresses a willingness on the part of the legislature of this State to assume jurisdiction for law enforcement purposes over Indian lands is provisions for adequate reimbursement to the State of North Dakota and its political subdivisions

for the costs of providing such services can be made with the federal government. In order to facilitate this, the legislative assembly has passed a resolution calling for the submission of a constitutional amendment to the electorate at the June primary election in 1956, which would authorize the legislature, in its discretion, to accept such jurisdiction.

House Concurrent Resolution Q-1 further directs the Legislative Research Committee of this State to confer with the executive and legislative branches of the Federal Government for the purpose of arriving at an equitable solution to this matter. The Legislative Research Committee wishes to express its willingness to appear before your subcommittee at a later date, should that be desirable in order to further facilitate the adoption of measures to improve the law enforcement situation on Indian lands in North Dakota.

Very Truly Yours,
Emerson Murry-Research Director

It is not the purpose of this report to develop a thesis that juvenile problems are greater on one Indian reservation than on other reservations in the U.S. There is just one purpose of this report and that is to call the attention of persons to the fact that there is a problem of delinquency on Indian reservations and that there is no well defined program to cope with this problem and try to offer some hope of correction.

One approach to the study of the problem should begin with an understanding of the vacuum that exists on Indian reservations in regard to Law and Order jurisdiction. Until some well defined and acceptable approach has been set up in the state of North Dakota, this vacuum will exist and the area devoid of law will increase. The federal government does not have a criminal code to cover the area of crime. (The following illustration explains the situation.)

Page 210--Hearings on Juvenile Delinquency, 84th U.S. Congress, S.R. 62

Mr. Canote, special officer, U.S. Indian Service, Albuquerque, New Mexico testified as follows: "Some of our boys get into serious trouble of a juvenile nature. For instance, in one of our pueblos a 15-year old boy did everything from assault with intent to rape, stealing of cars, breaking into the postoffice, getting in gang fights, being a leader, beating up kids with these bicycle chains--pachuco actions, we call them back there--and we couldn't get anyplace with him.

We finally got him into the district court--we couldn't get him into the Federal courts, but we finally got him into the State district court, and they put him on probation. He went back and stole a car--this all happened on the reservation--and they revoked his probation and sent him to Springer.

He ran away about five times from there and they found out that he was incorrigible in the institution. On one of those occasions when he ran away, he caught a non-Indian woman on the river bank and he wrestled with her for about an hour trying to rape her.

The county sheriff called my attention to it and we found out that it was just an assault attempt to rape, and it was not covered by any Federal offense. You would have to actually complete the action of

rape in order to have it covered by a federal offense. So the United States attorney finally found that we still had this boy under commitment at Springer, so he said, "Refer him back to Springer."

That applies where you have an Indian subject and a non-Indian victim or a non-Indian subject and an Indian victim. We were told that they did not want to apply this act except in very extreme situations, so we sent the boy back to Springer under the original commitment. He was there about 2 weeks and the board at Springer said that the boy was incorrigible and that they could not handle him. So under the statute, they referred him to the State prison. He was 19 years old at this time.

He went to the State prison, and there under a program that they have of prisoners being able to challenge their commitment, taking care of their own application he came up and said that the offense he had been committed for, originally was committed against an Indian on an Indian reservation, and he himself was an Indian. Under those circumstances, the court had to release him under this writ. That boy came back to the Pueblo and became a gang leader again. Finally nature stepped in. He tried to beat up his mother for 2 bucks and he stuck a beer case opener at her throat and an uncle got into a fracas and beat him up, and the boy finally died as a result of this. So nature helped us out there, and the law did not."

The commitment of juveniles from Indian reservations with Indian heritage to the Miles City, Montana, Industrial School for boys has been carried on for several years. The jurisdiction of courts and state law has been overlooked because of an interpretation that this institution is a school and is not a penal institution. Someday, this practice will be questioned in our courts. At the present time approximately 50% of the enrollment at the Miles City Industrial School consists of children with Indian blood. This is interesting because the Indian population in Montana is less than 5% of the total population. The cause of this situation has been explained by students of the problem in the fact that Indian people on reservations have never lived under the restraint of law and order which is found on the non-reservation areas of the state. Citizenship and community responsibility which are developed through constant living in an area where state law and order prevails is materially different from those communities where the everyday habits of living have been established through many years of non-conformity to state law and order.

The Montana Vocational School for Girls is located near Helena. The school has an enrollment of approximately 80 girls. The number of girls with Indian blood at the school fluctuates in the area of 50%. The cause of this tremendous impact from Indian children has been attributed to lack of experience of living under State law and order. There are many illustrations which tend to indicate that the problem of juvenile delinquency is more common among Indian people than among the non-Indian population. The hearings conducted by the United States Congress tends to bear out this conclusion.

NEED FOR FEDERAL ASSISTANCE Page 311, Senate hearings on Juvenile Delinquency, S.Res. 62, April 28, 1955

Testimony of Clarence Wesley, Secretary, Tribal Council, San Carlos Apache Reservation, and presently, President of the National Congress of American Indians: "I would like to add to the law and order discussion on the reservations, it is true that since 1924, Indians were considered as citizens of this country. We got the franchise to vote in 1948. We got

the right to vote. Now, Indian people are admitted to public assistance. Now, they have the privilege to drink, just like anyone else. And I believe that these privileges should go along with responsibility. I do not mean to advocate the application of Public Law 280 on the reservation and I am speaking now of the San Carlos Reservation. Of course, different tribes have different views on this thing. But somehow, perhaps it can be arranged, like they are doing with education, and like they are doing with, I believe, the Extension Service, I am not quite sure, for why wouldn't it be possible for the Federal Government to appropriate so much money to the States so that proper law and order can be established on the reservation?"

Mr. Chumbris: "Mr. Wesley, while you are on this particular point, perhaps we can give you an answer as to your question. At a hearing we had in Washington, March 11, in which we had the Secretary of the Interior and Commissioner of Indian Affairs, and his top level staff, as well as two gentlemen from North Dakota, and the question of insufficient funds for law and order was brought up at the suggestion of Senator Langer, Senator O'Mahoney, and Senator Kefauver, a meeting was arranged and we went before the subcommittee on appropriations, headed by Senator Hayden, and the gentleman from North Dakota went with the Indian Bureau and the Senators and presented exactly the same point you are presenting now to the appropriations committee, pointing out that they are getting only 20% of what they asked from the Congress and of the Budget Bureau. It seems like the Budget Bureau is one that has repeatedly cut down on the request of the Indian Bureau from $1,400,000 requested to about $435,000.

Now I think that the action of our subcommittee, plus the action of the subcommittee on appropriation, to do something about the problem, might bring about some results. I thought I would bring that out, since you have been vitally interested in it, as to why we cannot get more money for appropriations for law and order."

Mr. Wesley: "Thank you. In due time we are going to prepare a long-range program, with the hopes that Congress can appropriate money subjugating more lands and developing other potentials on our reservations. I know that the only way that we can convince Congress, perhaps, is by coming out with some program to present to Congress. I would like to say that the Indians here in the State of Arizona are very interested in their problems such as health, education, law and order, adult education and so on and so forth. Through the generosity of some foundation grants the National Council of American Indians, or rather, the National Congress of American Indians, and the Arizona Intertribal Council has sponsored an institute early in April. You will find in this document some of the actions that were taken by the Indian tribal councils and some of the recommendations that they would like to pass on to your subcommittee."

STATEMENT OF JOHN B. HART, EXECUTIVE DIRECTOR--North Dakota Indian Affairs Commission on Law Enforcement Problem. Page 460, Report on Juvenile Delinquency Hearing S. Res. 62, March 12, 1955

Mr. Hart: "Senator, the legislature, after the Supreme Court decision passed a resolution authorizing a constitutional amendment which would in effect, if passed by the people of the State, give the State legislature authority in their discretion to take over law enforcement.

Apparently the public statements that have been made by the members of the legislative research committee, and the leaders of both the Senate and the House made in the presence of Senator Langer: "We are not going to take over law enforcement unless there is reimbursement." Does that answer the specific question?

Senator Langer: "But they went further. Representative Rhode said, "We are not going to pay for the school children that are on the trust land and we are not going to pay independent welfare of Indians on trust land in the Supreme Court decision."

The State of Montana Highway patrol has been combating the problem of jurisdiction of state highways on Indian Reservations for the past two years. Several questionable agreements have been made with Tribal Council in an effort to solve the problems. The denial of state jurisdiction on Indian reservations places all these agreements in jeopardy. On two reservations in the state there have been agreements between the tribal councils and the Justice of Peace courts to handle misdemeanors. These agreements have little value because the State of Montana cannot enter into an agreement without permission from legislature. At the present time, jurisdiction on Indian reservations is handled in the following manner: The U.S. Government has reserved for itself jurisdiction over the eleven major crimes. These crimes are: murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, robbery, burglary, larceny and tresspass.

The administration of this law comes under the F.B.I. and the U.S. District Attorney in the Federal courts. These agencies are very often delayed in their administration because of the tremendous volume of work. All other crimes are classed as misdemeanors and come under the authority of the tribal officers, tribal judges and tribal courts. On some of the reservations the administration of law and order is quite expensive. Some reservations employ two judges to preside over these courts at salaries ranging up to $7,000.00 per year. They also employ as high as twelve officers with a complete fleet of cars and maintain their own jails and jailers. On some reservations the jails are referred to as hotels. On some reservations, a cooperative agreement exists between the tribal groups and the Justice of Peace courts to administer justice. This type of administration is confusing to state officals and many people because of the lack of jurisdiction in state courts.

The Commission on the Rights, Liberties, and Responsibilities of the American Indian is financed by the "Fund for the Republic". The Commission consists of the following:

W. W. Keeler, Executive Vice President, Phillips Petroleum Co., Former Principal Chief, Cherokee Nation
A. M. Schlesinger, Professor of History, Harvard University
Karl N. Llewellyn, Professor of Jurisprudence, University of Chicago
Charles A. Sprague, Editor, Oregon Statesman
O. Meredith Wilson, President, University of Minnesota
Dr. S. A. Aberle, M.D., Albuquerque, New Mexico
William A. Brophy, Former Commissioner of Indian Affairs

This Commission has published a summary of their study and has the following to say about Law and Order. (page 27 of the report)

RECOMMENDATIONS

The national policy, which for more than a century and a half has authorized the maintenance of tribal government, should for the present be continued. They should be dispensed with only when a majority of a

tribe so desires. Until then, the authority of these governments in local affairs should not be curtailed through unilateral action of the United States except in one respect: Federal law should require that tribal safeguard certain basic civil rights and provide for appeal of civil rights cases to Federal and State Courts.

The tribes should install modern fiscal controls and so manage tribal properties as to ensure that all members participate fairly in the benefits.

The power of the Secretary of the Interior to supervise the actions of tribes and of their business corporations should be so reduced as to allow them freedom to operate to the full extent of their ability. The United States, however, should not be liable for any mistakes that may ensue.

The economic functions of a tribe should be kept separate and distinct from its political activities and to this end be lodged in Federally licensed corporations. The directors of the enterprises should serve staggered terms and need not necessarily be members of the tribe. A primary purpose, however, should be to train Indians as soon as possible to become executors of their own undertakings.

Tribes which cannot effectively govern in every department of adequately enforce the law, yet desire to continue their governments, should agree to transfer the functions in question piecemeal to the States, under proper safeguards.

Public Law 280, adopted in 1953, should be amended: First, to necessitate consent of a tribe before a State assumes responsibility for the civil and criminal causes specified in the act; second, to provide in express terms that, with tribal consent, a state may take over jurisdiction piecemeal as to subject matter and to area; and, third, to require any such state to meet minimum standards in rendering services to Indians, which standards should not fall below the highest maintained within the State. The judgements to tribal courts should be made enforceable through the State judicial system.

It is a commonly accepted opinion that state jurisdiction of law and order on Indian reservations will develop slowly until some federal reimbursement is provided to defray the cost. If P.L. 280 is amended to provide for consent of the Indian people no state problem has been solved. The state must likewise pass similar legislation. State legislation may expedite the federal legislation.

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GOVERNORS' INTERSTATE INDIAN COUNCIL, Missoula, Montana, August 14, 1961

LAW AND ORDER PANEL DISCUSSION

Opening Address by Royal D. Marks, Attorney for five New Mexico and Arizona Tribes:

In general it might be observed that law and order problems on Indian Reservations are much the same as law and order problems off the reservations. Isn't it true that both on and off the reservation, we are getting into a more complex society which makes law and order baffling to the individual?

The principal areas for problems are:

1. Confusion over jurisdiction. This is difficult even for a trained lawyer. The most complex problem is jurisdiction on Indian reservations.

2. The breakdown or disintegration of the Indian community and culture.. Indian society is changing and the stresses and changes in real life put stresses and strains on Indian society which result in law and order problems. The government bureau which does not keep a consistent policy is often more discouraging than helpful to the people that it is supposed to serve.

3. The poverty of the tribe and its inability to provide law and order services in terms of police and judicial mechanism that are so necessary and the poverty of the people cause greater law and order problems in the lower economic and social scale.

Who has jurisdiction? The tribe has a sovereignty with federal authority to reduce that jursidiction; the federal control over the eleven major crimes; murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, larceny and embezzlement, before P.L. 280, and the area of jurisdiction encompassed within the Assimilated Crimes Act. This is a statute which states that a crime committed in a territory over which the federal government has jurisdiction, and if it would be an offense under state law, it would be a federal crime and tryable in federal court under state law. Gambling is a good illustration....By specific statute the federal government has given the state jurisdiction in such areas as health, sanitation and compulsory education laws.

The basic question of jurisdiction comes up under P.L. 280 where civil and criminal jurisdiction was turned over outright to the states of California, Nebraska, Wisconsin, Oregon and Minnesota.

Criminal jurisdiction of the tribe is exclusive outside of the eleven major crimes, where the offense is by one Indian against another. Tribal courts have concurrent jurisdiction over the offense committed by an Indian against a non-Indian. However, if an individual is tried and punished in Tribal Court, he may not be tried in federal court. The Tribal Court also has jurisdiction over civil matters such as contracts, torts, etc. There is not much of this type of litigation in Tribal Courts but there undoubtedly will be more in the future. One of the most important areas of civil jurisdiction is the Tribal Court power over domestic relations....

The most serious domestic problems are those involving custody of children where there is parental neglect. On some reservations there are many neglected children. The question presents itself--to what court do we go for relief in these problems? The tribal court is not equipped to take care of these children.

Another problem arises because of unpunished crimes due to confusion over jurisdiction....The state of Nebraska was given exclusive jurisdiction, however, this was not acceptable to the state. As a result there was no jurisdiction on the Omaha and Winnebago reservations when the state authorities refused to take over.

The cost of law and order on Indian reservations is more than many states or counties are willing to assume. The State of South Dakota has refused to assume any jurisdiction on highways through Indian reservations because the United States of American has not made proper provision for reimbursement to the State of South Dakota and the various counties for the added cost in connection with the assumption of this jurisdiction.

There are crimes which do not come under the state or federal law. These include trespass by non-Indian hunters and fishermen. The new federal law covers this violation but tribal police and tribal courts are powerless to enforce the law against non-Indians because they do not have jurisdiction. Also tribal members are unfamiliar with law and courts. This is particularly true in areas with large full blood population.

The biggest problem stems from the lack of economic resources. The officers are being trained as fast as possible and judges desire more training. Most of the judges lack specific training in the quirks of the law which results in tragic mistakes. There is also a lack of decent sanitary jails which are fit to be habitable by human beings. There is also a lack of social workers and psychiatrists. Tribal judges must often decide juvenile cases where they must either let the defendent go or put him in jail with repeated criminals or drunkards. Tribal courts are not equipped to carry out a rehabilitation program common in non-Indian courts.

There are also many slipshod procedures in tribal courts. There is no right of appeal provided. The law and order problems on Indian reservations are social problems such as physical environment, low economic status low social status, disintegration of the Indian community, change in cultural patterns and rapid shift in society. To these must be added the increased drinking problems and juvenile problems.

One of the most shocking situations that exists is that a substantial number of services preformed in towns--such as barbers, motel operators, service-station men are preformed by non-Indians. These are services which the Indian should provide for himself. There is a good statement covering this phase in the Task Force Recommendations:

(12) Amending Public Law 280 to provide for the transfer of jurisdiction only with the consent of the Indian tribes and the states affected.

(13) Action by Indian Tribes to safeguard the civil rights of their members against violation by Tribal governments.

(14) Legal assistance to Indians to enable them to obtain the welfare benefit to which they are entitled from the states and counties in which they reside.

Another solution is the exercising by tribes of their taxing and licensing powers. The taxing and licensing powers may be exercised against Indians as well as non-Indians. Some of the funds obtained in this manner can be used to bring about more professional services in the tribal courts. The judges can be better trained and attorneys can be permitted to appear in the court. There is also the necessity to develop better court procedures.

In the problem of juvenile delinquency the community has a great deal of responsibility. Many children drop out from school because of poor home environment and crowded living conditions with no privacy for study. Tribes might well consider keeping the school building open in the evening for study and youth activities. There is a lack of guidance services to place values on the high school diploma and college training. The judge has only one alternative to placing the juvenile in the company of adult criminals and that is to let him go. The juvenile problem is one of rehabilitation.

We should work actively to amend P.L. 280 so that states may assume jurisdiction piecemeal. This approach would avoid such conflicts as are found in Nebraska and South Dakota. It would require the cooperation of state and tribal officials. These are not easy problems nor easy solutions. They can however, be used for further consultation and discussion.

ADDRESS ON LAW AND ORDER BY HONORABLE JAMES HARRISON, CHIEF JUSTICE MONTANA SUPREME COURT BEFORE DELEGATES OF THE NORTHWEST AFFILIATED TRIBES

Missoula, Montana August 15, 1961

Master of Ceremonies, Mr. Walter McDonald, Chairman, N.W. Affiliated Tribes. The principal speaker at this event Hon. James Harrison, Chief Justice Montana Supreme Court. After the introduction of guests, Chief Justice Harrison delivered an address on law and jurisdiction problems on Indian reservations in Montana. His expreience includes that of County Attorney in a county with an Indian Reservation besides experience on the Supreme Court. A brief summary of this address is as follows.

Judge Harrison gave a resume of the statutes having to do with jurisdiction over Indian territory. In 1871 Congress changed concept so as not to recognize tribes as independent nations; 1875 provided federal courts had jurisdiction over all crimes committed in Indian country except those committed between Indians. Later Ex-Parte Crow Dog was decided in 1883 by U.S. Supreme Court holding under exeption in statute Crow Dog could not be tried in any court of the U.S. for murdering another Indian on the reservation. In 1885 Seven Major Crimes Act passed, applied only between Indians for crimes listed; 1932 this was enlarged to Ten Major Crimes Act. This provided federal jurisdiction for Indian-Indian offenses listed.

1925 Assimilative Crimes Act adopted which accepted state criminal laws for areas of federal jurisdiction within the boundaries of each state but it was not until 1946 that the act was applied to Indian offenses; previous rule that tribes had exclusive jurisdiction of Indian-Indian crimes, except the ten Major, was thus modified.

However, if tribe punished for Indian-Indian offense he may not be tried for the same offense in federal court. A Montana case arose in federal court in 1957 where an Indian court by their law and order code was authorized to order delivery to proper authorities where either federal or state court had jurisdiction, if such federal or state authorities consent to exercise jurisdiction. Federal did consent after investigation and Tribal Judge noted on his docket "Transferred to Federal Court." Later Tribal Council directed tribal judge to dispose of case in tribal court. Tribal Judge levied fine of $25.00 Upon hearing of indictment in federal court it was dismissed and the district judge noted that to avoid such difficulties in future written notice of consent be given to tribal court and a dismissal of that court's complaint be made before proceeding in the federal court.

This situation shows up one of the difficulties very clearly. If the crime committed, in this case an assault, was serious enough to warrant an investigation by the federal officials and they agreed to assume jurisdiction for purposes of federal prosecution, was it a $25 matter? One would hardly think so. Courts are for the protection of our people as well as for punishment of those committing criminal acts. Thus it brings to the forefront, what is the value of a human life? If one can assault another to the point where it appears to an investigating agency that it constitutes a felony, to treat it as a passing misdemeanor, such as a traffic violation, cheapens the value of human life. What an Indian life is worth upon a reservation should be determined by the punishment meted out to one by the court for violating ones person, and if the punishment is but slight then it follows that the life is not worth much. I do not believe life should be cheapened in this manner and that appropriate steps should be taken so that the lives of all citizens, regardless of status or creed has the same value in the eyes of the law.

The Supreme Court of Montana has been very diligent upon a showing that an Indian was convicted in a state court for a crime over which either the tribal court or the federal court had jurisdiction to grant proper writs so that they were released from custody; but that is no solution to the problem. With highway traffic deaths reaching an all-time high it would seem that the negligent, reckless or drunken driver should be dealt with by the same code, no matter where he resides or what status he has, and at present this cannot be accomplished because of the jurisdictional problem facing all our citizens at present.

The answer to this problem in my personal opinion, is enforcement of all crimes by one jurisdiction, be it state of federal. I dislike concurrent jurisdiction between federal and tribal courts because of the many problems which can and do arise therefrom. We are all citizens of Montana, is there anything wrong with all of us being responsible to the laws of our own State? In my opinion real effort should be made, under legislation which is presently in effect, to grant exclusive jurisdiction to the state.

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GOVERNORS' INTERSTATE INDIAN COUNCIL
POLICY STATEMENT REGARDING LAW AND ORDER
Adopted Aug 16, 1961, Missoula, Montana

The Governors' Interstate Indian Council believes that all citizens, Indian and non-Indians alike, are entitled to equal protection under the law. The ultimate objective being equal protection of life, property and civil rights under one judicial system.

In recognition of the variance of problems confronting Indians, state by state, the ultimate objective of providing one judicial system should be based on the tri-lateral negotiation between Tribal Governments, appropriate state governments, and the Federal Government.

The Policy Statement was adopted at the Governors' Interstate Indian Conference in Missoula, Montana, August, 1961.

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INDIAN JUSTICE PROGRAM SUGGESTED BY SENATOR CASE

Washington (AP)

Senator Francis Case, R-S.D., views the tribal council system of government as having produced a breakdown of law and order of the nation's Indian reservations.

1. Judges for Indian tribal courts should be appointed by the U.S. District Court within whose jurisdiction the reservation is located. These Indian judges would be subject to removal by the court and their decisions could be appealed to the District Court.

2. Tribal courts file reports of their actions with the U.S. Dictrict Court.

3. Spell out which law enforcement agencies have jurisdiction in crimes committed on restricted Indian land.

"These recommendations are the result of witnessing too many unsolved crimes occuring without adequate protection to the people who live in Indian country."

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One of the biggest problems in state jurisdiction for Indian reservations is the cost. States hesitate to assume this additional burden and this additional cost and place this burden upon the tax payers of the state. Practically all state law enforcement is carried on through the office of the county sheriff. The office of the county sheriff is financed through personal and property taxes and the assumption of this financial burden results in increased taxes on the property owners. If various agencies are requesting state jurisdiction for Indian reservations, it will be necessary to provide funds for this increased activity from the federal level to replace taxes which have been lost through tax exempt Indian lands which have been placed in trust with the United States government.

The following is a brief comparison of the jurisdiction laws passed by legislatures in several states. The State of South Dakota assumes all jurisdiction of law and order on Indian reservations and does not provide for the consent of the Indian people. The law is quite brief and does not mention the protection of Indian people, their land rights, taxation, Indian ceremonials, and Indian cultures.

The Idaho law assumes jurisdiction over law and order on Indian reservations in the seven areas mentioned above. The consent of Indian people is not required for these seven areas. Consent, however, is provided for the extension of law and order and civil jurisdiction in any area beyond the seven mentioned above.

The Washington law is quite similar to the Idaho law in that the state assumes jurisdiction of law and order on Indian reservations in the seven areas mentioned above without requiring consent of the Indian people. Extension of law and order into other areas and civil rights is made possible in the Washington law only through the consent of the Indian people. This, however, applies only to the Yakima and Colville Reservations. Nine other Indian reservations in the state of Washington have requested and adopted state law and order. Several years ago the new jurisdiction law in the State of Washington did apply only to the Yakima and Colville Indian reservations.

The Montana jurisdiction law extends state law and order to the Flathead Indian reservation only after the consent of these people which would be expressed in a resolution or ordinance to the Governor of the State of Montana.

The following states have been using state jurisdiction for several years with very little conflict: Minnesota, Wisconsin, Nevada, Nebraska, California, Oklahoma and Texas. There seems to be a definite trend towards state jurisdiction of law and order on Indian reservations in the United States. * * * * * * * * * * * * * * *

SOUTH DAKOTA HOUSE BILL 791 Introduced by Mr. Olson of Bennett

A BILL FOR AN ACT ENTITLED, An Act relating to the Indian Country and assuming and accepting jurisdiction by the State of South Dakota of all criminal offenses and civil causes of action arising therein, and authorizing certain county commissioners and the State Board of Finance to contract and receive funds for additional costs of such assumption, and to repeal sections 65.0805, 65.0806, 65.0808, 65.0809 and 65.0610 of the 1960 supplement to the South Dakota Code of 1939.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. The State of South Dakota, in accordance with the provisions of 67 Statutes at Large, page 589 (Public Law 280), hereby assumes and accepts jurisdiction of all criminal offenses and civil causes of action arising in the Indian Country located within this State, as Indian Country is defined by Title 18 United States Code Annotated, section 1151, and obligates and binds this State to the assumption thereof, the provisions of Chapter 106 of the Session Laws of the State of South Dakota for 1901, as amended, or any other law of this State to the contrary, notwithstanding.

Section 2. The county commissioners of those counties of this state in which were is located Indian Country as affected by this Act, and the State Board of Finance shall be, and they are hereby authorized to accept grants-in-aid, and to negotiate, and contract with the Federal Bureau of Indian Affairs of the United States Department of Interior for reimbursement of any authorized and appropriated federal funds for the added costs to such counties and this State in connection with such assumption of jurisdiction.

Section 3. That SDC 1960 Supp., Sections 65.0805, 65.0806, 65.0807, 65.0808, 65.0809 and 65.0810 be, and the same are, hereby repealed.

(Section 4. Except as to criminal offenses and civil causes of action arising on any highways, as the term is defined in SDC 28.0101, the jurisdiction provided for in Section 1 herein shall not be deemed assumed or accepted by this State, and Section 1 and 3 of this Act shall not be considered in effect, unless and until the Governor of the State of South Dakota, if satisfied that the United States of America has made proper provision for the reimbursement to the State and its counties for the added costs in connection with the assumption of said jurisdiction, has issued proper proclamation duly filed with the Secretary of State declaring the said jurisdiction to be assumed and accepted.)

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SOUTH DAKOTA VOTERS VETO JURISDICTION BILL

(Reprinted from Indian News, of the Association on American Indian Affairs)

On election day the Sioux Tribes of South Dakota scored the greatest political victory in Indian history and retained the right to police their reservations. And they won with the solid backing of fellow South Dakotans.

On November 3, 1964, South Dakota's voters rejected a law that would have extended state civil and criminal jurisdiction to the Indian reservations. The final referendum vote was 200 thousand to 50 thousand nearly a 4 to 1 margin. The Referendum landslide was engineered by the United Sioux Tribes, an organization of tribal presidents representing South Dakota's nine reservations under the leadership of Rosebud's Cato Valandra. Frank Ducheneaux of Cheyenne River, J. Dan Howard of Standing Rock, Hank McBride of Crow Creek and Enos Poorbear of Pine Ridge also playing leading roles.

Departing from usual political practices the United Sioux presented both sides of the issue. Sioux spokesmen debated proponents of state jurisdiction. Advertisements of television and radio, in newspapers and magazines, "fact kits", posters, brochures, direct-mail flyers, and telephone committees bombarded the voters. "This Land We Call Ours", a half-hour documentary produced by the United Sioux was shown on television and at scores of service clubs, churches and political rallies.

The Sioux were joined in their campaign by non-Indian community leaders and rank-and-file voters who, under the aegis of the Keep Faith Committee worked tirelessly throughout the state. Tribal leaders agree state jurisdiction is inevitable, but argue that neither is the state ready for it, nor are the tribes. They pointed out that the immediate effect would be a collapse of law and order on the reservations since the state had appropriated no money for law enforcement. The Federal contribution would cease with a transfer of jurisdiction. For the state to assume the cost would place an excessive tax burden on its citizens.

Behind the campaign for state jurisdiction they saw powerful ranching interests maneuvering to take over large areas of valuable Indian land. The Sioux victory was the culmination of nineteen months of hard work. It began on March 25, 1963, when tribal presidents from the nine reservations met in Pierre to discuss ways to oppose House Bill 791 enacted by the South Dakota legislature and signed into law by Governor Archie Gubbrud on March 15. They formed the United Sioux Tribes and voted to launch a petition to drive to force the law to a statewide referendum. Under the chairmanship of William Whirlwind Horse of Pine Ridge, the United Sioux collected 18,500 valid signatures by the June 5 deadline. Scheduled to go into effect on July 1, the law was suspended.

By election day over a year later, Cato Valandra elected to succeed Mr. Whirlwind Horse, and the other Sioux leaders had won the support of most of the state's newspapers--even of the county sheriffs. Senators Mundt and McGovern issued statements favoring a "no" vote. Congressman Ben Reifel was outspoken in his opposition to House Bill 791. Several civil and church organizations joined the Sioux. The South Dakota Council of Churches set up meetings in 28 communities with qualified speakers presenting both sides.

Organized as the State Jurisdiction Education Committee and backed by leading stockgrowers, proponents waged a frenetic and vitriolic campaign. Their arguments implying that the state could do better without money what it costs the U.S. government and the tribes $500 thousand a year to do fell on deaf ears. In the fact of almost unanimous Indian opposition to the law, their propositions that state jurisdiction would

"free" the Indians baffled the average voter. Their suggestion that Indians were not already "first class citizens" won no friends on the reservations.

Election day produced a record turnout of Indian voters. Next day the Sioux placed notices in the state's papers thanking South Dakotans for their resounding vote of confidence. At a victory and thanksgiving celebration in Pine Ridge, Mr. Valandra stated, "by setting aside a state jurisdiction law, the people of South Dakota have given us the chance we needed to continue our long-range self-help program."

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CROW LAW AND ORDER IMPROVEMENT PROGRAM

From the Ten Year Goals of the Crow Tribe-A path of progress from 1965 to 1975 and into the future

PROBLEM

The Civil and Criminal Codes which are presently used by the Tribe are taken from the Code of Federal Regulations and are obsolete. The social order under which we live has become much more complex since these codes were established.

The Tribe does not have a traffic or juvenile code. This has and will continue to create problems.

The present qualifications for tribal judges are that they be a member of the Tribe and have never been convicted of a felony. In the complex world of today, these are very loc qualifications for a person who is expected to administer justice to their people.

GOAL

Adopt a new set of Civil and Criminal Codes which will more nearly reflect the times and be more in accord with the codes of other states. The Tribe should adopt a traffic and juvenile code, establish a juvenile court and upgrade the qualifications for tribal judges.

PROGRAM TO ACHIEVE:

In meetings with the Community Action Committee, tribal committees, and tirbal officials, the problems created by the present codes and how these problems can be solved by adopting new codes will be explained. The "how and why" the codes are holding back the Tribe's overall advancement will be explained. At these meetings, we can point out the need for a traffic code to regulate traffic on the reservation because of the very high accident and death rate, which is partially caused by a heavy increase in traffic.

Many members of the Tribe understand and are in agreement that a juvenile code and a juvenile court must be set up. Other members of the Tribe must be made aware of the problems arising because they do not have these codes and court.

A program will be set up to train the tribal judges. This program will be designed to give them a better understanding of the law and increase their ability to grasp the significant factors in the more complex cases. Professional attorneys can be made available to advise the tribal judges if the Tribe requests it. Tribal officials and the judges will be encouraged to request and make use of these services.

ATTAINABILITY:

Many members of the Tribe are aware of the presently inadequate civil and criminal codes. When more tribal members become aware of the law and order problems created by the antiquated codes, they will request and adopt new codes.

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SENATE BILL NO. 56

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 1, Chapter 240, Laws of 1957 and RCW 37.12.010 are each amended to read as follows:

The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of section 5 of this amendatory act have been invoked, except for the following:

1. Compulsory school attendance;
2. Public assistance;
3. Domestic relations;
4. Mental illness;
5. Adoption proceedings;
6. Juvenile delinquency;
7. Dependent children; and
8. Operation of motor vehicles upon the public streets, alleys, roads and highways: PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before the effective date of this amendatory act shall remain subject to state civil and criminal jurisdiction as if this amendatory act had not been enacted.

Section 2. Section 3, chapter 240, Laws of 1957 and RCW 37.12.030 are each amended to read as follows:

Upon the effective date of this amendatory act the state of Washington shall assume jurisdiction over offenses as set forth in section 1 of this amendatory act committed by or against Indians in the lands prescribed in section 1 of this amendatory act to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and such criminal laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

Section 3. Section 4, chapter 240, Laws of 1957, and RCW 37.12.040 are each amended to read as follows:

Upon the effective date of this amendatory act the state of Washington shall assume jurisdiction over civil causes of action as set forth in section 1 of this amendatory act between Indians or to which Indians are parties which arise in the lands prescribed in section 1 of this amendatory act to the same extent that this state has jurisdiction over other civil causes of action and, except as otherwise provided in this chapter, those civil laws of this state that are of general application to private

persons or private property shall have the same force and effect within such lands as they have elsewhere within this state.

Section 4. Section 6, chapter 240, Laws of 1957 and RCW 37.12.060 are each amended to read as follows:

Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Section 5. There is hereby added to chapter 240, Laws of 1957 and chapter 37.12 RCW a new section to read as follows:

Whenever the Governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercise civil and criminal jurisdiction or both elsewhere within the state: PROVIDED, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in section 4 of this amendatory act.

Section 6. Section 2, chapter 240, Laws of 1957 and RCW 37.12.020 are each repealed.

Section 7. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

FILED: March 13, 1963, Vic Meyers, Secretary of the State.

NOTE: The Washington Indian jurisdiction law was amended to include several features found in the Flathead law such as taxation, water rights, hunting, fishing, trapping etc.

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FISHING RIGHTS OF THE MAKAH INDIANS From the Pacific Reporter of Supreme Court Decision

The W shington State Supreme Court Decision which dealt with fishing rights of the Makah Indians at the mouth of the Skagit River had the following background according to the evidence at the trial:

"In the early morning hours of July 28, 1960 the defendent was fishing from his boat in what is called the "jetty drift" located near the mouth of the north fork of the Skagit River. He was operating an 18 foot, 25hp. outboard motor boat, and was using a 600 foot modern nylon gill net. One end of the net was attached to his boat, the other end extended horizontally 600 feet. The top of the net was equipped with floats and the bottom with a lead line. The net thus was held perpendicular in the water and the mesh was deep enough to drag the bottom of the river. The defendent would commence in the upper reaches and drift with the tide to the end of the jetty. This procedure would be repeated. The effect was to sweep the jetty clean of fish. The defendents' catch of salmon was for sale to commercial buyers.

The "jettydrift" is a commercial fishery which has been enjoyed in common by the Indians and non-Indians for a period of many years. In 1959 the Swinomish Indians asserted that they could fish unregulated at the "jetty drift". The regulation in effect at the time of the defendents arrest was not a permanent prohibition of fishing. It was a 10 day closure designed to protect the peak of the salmon runs passing through the Skagit River to the spawning grounds.

Salmon migrate through many fisheries. Time closures therefore are staggard to protect the fish as they make their way through each fishery situated on the paty of migration. This 10 day closure on the Skagit River was closed to all fishing. Defendent asserts him immunity to the closure regulation because of Article 5 of the Treaty of Point Elliott:

The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common of all citizens of the territory and of erecting temporary houses for the purpose of curing together with the privilege of hunting and gathering roots and berries on open and unclaimed lands provided however that they shall not take shell fish from any beds staked or cultivated by citizens.

The court found that the respondent was not fishing within the boundaries of the reservation but was fishing at the usual and accustomed fishing grounds. The 24 assignments of error raised two issues:

1. Whether the state can show that regulation is reasonably necessary to conserve a fishery resource.

2. Whether it has been pre-empted by the Treaty of Point Elliott from any state action in regard to Indian fishing rights.

It is contended by the respondent that the Treaty of Point Elliott reserves to Indians the unrestricted right to fish. Therefore the reasonableness of many regulations is a irrelevancy. The law is otherwise when applied to treaty Indians fishing off the reservation at the usual and accustomed grounds. The U.S. Supreme Court in the case of Tulee vs. Washington 315 U.S. 681, 62 the court ruled that the state might regulate the time and manner for off reservation fishing by Indians where necessary for conservation...while the treaty leaves the state with power to impose on Indians equally with others such restrictions of a purely regulatory nature concerning the time and the manner of fishing

outside the reservation as are necessary for the conservation of fish, it forecloses the state from charging the Indians a fee of the kind in question here.

In the case of Maison vs. Confederated Tribes of Umatilla Indian Reservation 314 F Second 169 (CA Ninth 1963) the court said:

"Thus in both the Tulee and Makah cases it was held that the Indians right to fish this qualified by the state right to regulate such fishing when necessary for conservation but, to establish necessity the state must prove two facts:

First, that there is a need to limit the taking of fish; second that the particular regulation sought to be imposed is indespensable to the accomplishment of the net limitation....The reserving of Makah fighing rights at usual and accustomed places under the 1855 treaty was founded upon the need of the petitioner tribe to maintain its then subsistence economy which was based primarily upon the immediate products of the sea and in no sense was this treaty provision a guarantee of future commercial fishing rights....

To ascertain whether regulation is reasonably necessary for conservation of pacific salmon one must understand the life cycle of these fish. Pacific salmon are anadromous fish--that is they-re hatched in fresh water, descend to salt water, attain most of their growth, and then return to the stream of their origin to spawn and perpetuate their kind. After spawning they die. They have a well developed homing instinct that enables them to return and spawn in the stream of their origin. Spawning occurs in the fall and winter in well percolated gravel beds, where the fish bury their eggs to protect them from predators and the elements. The eggs hatch in the gravel and the fish live there for a time, subsisting on the yolk material from the egg. After emerging from the gravel, the young fish begin to swim actively, depending on the species, some salmon spend a year or more in fresh water before migrating to the sea, while others leave for ocean environment within a few weeks or months after emerging from the gravel of the nest. Three to five years later the Chinook Salmon return from the sea to the river of their birth to spawn.

After the various species of salmon near maturity and are in prime condition, they leave extensive pastures of the sea to begin the long journey to the home stream of their origin. It is during this period of the salmon's life that the main effort toward harvest is concentrated. While still at sea the Chinook silver and pink salmon are caught by the commerical and sports trollers off the coast of Alaska, British Columbia, Washington, Oregon and California. After these species enter the inside waters off the mouths of their spawning streams their numbers are further reduced by net fisheries.

When the survivors excape the last net fisheries in the rivers of their birth they deposit their eggs in the gravel to perpetuate their kind, complete the life cycle and die.

(The evidence of the case showed that as the number of nets increased the escapement decreased and the point of extinction was apparent.) Experience has shown that for runs of Chinook Salmon returning to the river there are limits within which the harvest must be kept if sufficient seed stock is to reach the spawning grounds to maintain the runs. For Chinook a catch of 40 to 50 per cent of the total run is estimated to be within the necessary limits. The decline in recent years has been

tremendous. Records show that gill net fishing has taken 95 per cent of the fish in the Columbia and Fraser Rivers.

The final statement of the decision of the Supreme Court of the State of Washington is as follows:

"Upon admission to the union upon equal footing this state acquired all the sovereign powers of the original states including the power to preserve its natural resources, and it cannot be stripped of this power by implication or deduction."

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IDAHO CONCURRENT JURISDICTION LAW FOR INDIAN RESERVATIONS

67-5101

State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country--The state of Idaho in accordance with the provisions of 67 Statutes at Large, page 58 (Public Law 280) hereby assumes and accepts jurisdiction for the civil and criminal enforcement of state laws and regulations concerning the following matters and purposes arising in Indian country located within this state, as Indian country is defined by title 18, United States Code 1151, and obligates and binds this state to the assumption thereof:

A. Compulsory School Attendance
B. Juvenile delinquency and youth rehabilitation
C. Dependent, neglected and abused children
D. Insanities and mental illness
E. Public assistance
F. Domestic relations
G. Operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof. (1963, ch. 58 1, p 224)

67-5102

Additional state jurisdiction with consent of tribal governing body. Additional state jurisdiction in criminal and civil causes of action may be extended to particular reservations of Indian country with the consent of the governing body of the tribe occupying the Indian country affected by the assumption of such additional jurisdiction. This may be achieved by negotiation with the tribe or by unilateral action by the tribe. In every case the extent of such additional jurisdiction shall be determined by a resolution of the tribal governing body and become effective upon the tribe's transmittal of the resolution to the attorney-general of the state of Idaho. Such resolution may effectively accept jurisdiction as to any particular field of criminal or civil jurisdiction. All state jurisdiction extended by virtue of this act shall be concurrent (and not exclusive) with jurisdiction in the same matter existing in the tribes or the federal government. (1963, ch 58, 2, p.224)

67-5103

Matters excepted from state jurisdiction. Nothing in this act shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein;

or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping or fishing or the control licensing, or regulation thereof. (1963, ch 58 3, p.224)

On April 16, 1965, the office of the Attorney General of the State of Idaho received from the Nez Perce Indian Tribal Executive Committee, which Committee is the governing body of the Nez Perce Indian Tribe, a resolution, made and adopted by said Committee at its regular meeting of April 13, 1965, giving and granting criminal jurisdiction to the State of Idaho on Nez Perce Indian lands in relation to certain matters as hereinafter set out.

All such jurisdiction extended to and assumed by the State of Idaho shall be concurrent (and not exclusive) with jurisdiction in the same matters existing in the tribe or federal government, Section 67-5102

IDAHO CODE

Such extension of jurisdiction is made and done by the Nez Perce Indian Tribe, itself, without express concurrence of any branch or department of the State of Idaho other than the general permission for such action granted by statute, Section 67-5102, Idaho Code, and 67 Statutes at Large 589. According to the above named statutes the State of Idaho assumes such jurisdiction at the time when a resolution or proclamation has been duly enacted and forwarded by the governing body of the Indian tribe to the office of the Attorney General.

The office of the Attorney General has no authority to, nor does it in any way agree for the State of Idaho to abdicate, cede or give back any jurisdiction previously acquired by the State of Idaho under Section 67-5101, Idaho Code, by the act of punishing the Nez Perce Tribal Executive Committee resolution hereinafter set out.

According to the terms of Section 67-5102, Idaho Code, the State of Idaho, Clearwater, Idaho Lewis and Nez Perce counties and all cities and villages therein situated have assumed concurrent criminal jurisdiction over the hereinafter stated matters. This extension of jurisdiction is best set forth in the words of the said resolution which reads as follows, to-wit:

"NOW THEREFORE, BE IT RESOLVES, By the Nex Perce Tribal Executive Committee, the governing body of the Nez Perce Indian Reservation, in the aforesaid counties (Clearwater, Idaho, Lewis and Nez Perce) of the State of Idaho, at a duly constituted meeting of said Committee, that consent is given to the assumption by the State of Idaho of concurrent criminal jurisdiction within the Nez Perce Indian Reservation over the following offenses:

Drunkeness, Disturbing the peace, Contributing to the delinquency of a minor, Procuring intoxicants for minors, Simple assault, Battery, Kidnapping, Embezzlement, Fraud, Forgery, Receiving stolen property, Extortion, Indecency and obscenity, Vagrancy, Trespassing and malicious injuries to property, Public nuisance and abatement thereof, Cruelty to animals, and carrying concealed and dangerous weapons in public places (the carrying of firearms in pursuit of treaty hunting rights expressly excluded).

BE IT FURTHER RESOLVED, that the offenses listed in Section 1153, Title 18, United States Code, commonly known as the ten major crimes, i. e. murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny; and also embesslement or theft of funds or property of an Indian tribal organization as provided by Federal law, shall remain under the jurisdiction of the Federal Government until such time as the Nez Perce Tribal Executive Committee shall enact an appropriate resolution expressing the desire of the people of the Nez Perce Reservation that the State of Idaho accept additional criminal jurisdiction of such crimes, and

BE IT FURTHER RESOLVED, that the Nez Perce Tribe retains jurisdiction over all offenses over which it may presently exercise criminal jurisdiction through enactment of an appropriate Law and Order Code, and

BE IT FURTHER RESOLVED, that this resolution expressing the desire of the people of the Nez Perce Indian Reservation to accept the criminal jurisdiction of the State of Idaho, as herein provided, be forwarded to the Attorney General of the State of Idaho, pursuant to Chapter 58, Laws of 1963, enacted by the Legislature of the State of Idaho, on March 6, 1963, and

BE IT FURTHER RESOLVED, that nothing in this resolution shall be construed as an abrogation of Section 3, Chapter 58, Laws of 1963, the State of Idaho."

Section 3 of Chapter 58 of the Laws of 1963 is now Section 67-5103, Idaho Code. It exempts all matters related to Indian rights and lands controlled by the Federal Government and hunting and fishing rights of Indians from any assumption of State jurisdiction.

Dated this 15th day of May, 1965, at Boise, Idaho.
Allan G. Shepard, Attorney General, State of Idaho

RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs, on June 27, 1961; and

WHEREAS, by act of August 15, 1953, Public Law 280, 83rd Congress, First Session, the United States consented to the exercise of criminal and civil jurisdiction by the States over Indians and Indian reservations, and

WHEREAS, by Chapter 58, Laws of 1963, State of Idaho, the State of Idaho assumes and accepts jurisdiction for the civil and criminal enforcement of State laws and regulations concerning compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected and abused children; insanities and mental illness; public assistance, domestic relations; and operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof, in Indian country within the state, as Indian country is defined by Title 18 Section 1151, United States Code, and

WHEREAS, by Section 2 of Chapter 58 of the State of Idaho obligates and

binds itself to the assumption of such additional jurisdiction as is determined by a resolution of the tribal governing body and becomes effective upon the Tribe's transmittal of the resolution to the Attorney General of the State of Idaho, and

WHEREAS, the Nez Perce Tribal Executive Committee is the duly constituted governing body of the Nez Perce Tribe, and

WHEREAS, the Indians residing on the Nez Perce Indian Reservation in Lewis Nez Perce, Clearwater, and Idaho Counties in the State of Idaho, acting through the Nez Perce Tribal Executive Committee, their governing body duly recognized by the Bureau of Indian Affairs, are desirous at this time of having the State of Idaho assume and exercise concurrent criminal jurisdiction over offenses other than those commonly known as the major crimes, committed by Indians residing on the reservation, and

WHEREAS, the Nez Perce Tribe of Idaho has Treaty rights to fish at usual and accustomed places, along with hunting rights.

NOW, THEREFORE, BE IT RESOLVED, by the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Indian Reservation, in the aforesaid counties of the State of Idaho, at a duly constituted meeting of said Committee, that consent is given to the assumption by the State of Idaho of concurrent criminal jurisdiction within the Nez Perce Indian Reservation over the following offenses;

(See Resolution on page 28 of this book)

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NAVAJO TRIBAL ATTORNEY REPORT

Undoubtedly the fact that taxpayers would have to assume the financial burden has been a principal deterrent to the extension of jurisdiction under P.L. 280 although state jurisdiction has been extended in some states. In arguing the case of William vs Lee, 358 U.S. 217, 1959, before the Supreme Court of the United States, in which a trader on the Navajo Reservation sought to attach a Navajo flock of sheep on the reservation by process issuing from an Arizona sheriff's office, which attachment has been sustained by the unanimous decision of the Supreme Court of Arizona, I argued among other things that this case represented a "bargain basement assertion of jurisdiction" totally without correlative extension of courts and law enforcement facilities which were implicitly required by P.L. 280. The Arizona Supreme Court was unanimously reversed and the attachment vacated. There is a better remedy than P.L. 280 affords. Senator Metcalf of Montana has long had a bill pending, S. 253 in this Congress, proposing that tribes and state governments be authorized to agree on piecemeal extension of jurisdiction namely, by one subject matter at a time. For example, to stop the high rate of death and injury on highways, tribes could agree to extensions of state laws over their reservation in respect to highway traffic. Many subjects could be covered in this way such as state laws regarding elections, truancy, and boat traffic codes where lakes and rivers are concerned and other matters.

Tribal contributions could be agreed upon when advisable. With experience and education in specific agreed fields of joint effort, the Indians would gradually lose their fear of state jurisdiction, at least to the extent necessary for accomplishing mutual objectives in these chosen fields.

Senator Metcalf told me that when he was Attorney General of Montana he had never failed to reach agreement with tribal officials and councils on cooperative measures for law enforcement, but the authority of Congress is needed in S. 253, in exercise of the plenary power of Congress over Indian affairs, to authorize such agreements insofar as they could extend state laws to Indian reservations.

Arizona recognized this basic need after the decision in Lee vs Williams was handed down, by passing Joint Resolution No. 1 in 1961 which memorialized Congress to pass the then pending piecemeal jurisdiction bill, and in the meantime authorizing state and county officials in Arizona to reach cooperative agreements with tribal officers for law enforcement whenever the tribes had adopted laws (such as the Traffic Code) which are substantially identical with or parallel to the state law on the same subject. No where is it more imperative that there be a common denominator of rules and regulations than in respect to highway traffic if the increasing death rate is to be stopped.

PIECEMEAL JURISDICTION

This topic indicates that the Indian people accept state jurisdiction piecemeal. Such legislation has been introduced in the United States Congress and is being practiced in some states. The meaning of such a topic includes permission for the Indian tribes to accept those portions of state jurisdiction which they feel contributes to their own well-being and to the solution of their own problems.

Such an approach to the problem is worth considerable study by the Indian people. Why do Indian people fear state jurisdiction? This is a topic worthy of a great deal of study.

Two years ago a young man with a small degree of Indian blood mortgaged a house which he had to obtain funds to build a bowling alley. This man was not a good financier and the bank sought to foreclose the mortgage after a two year delinquency in payments. Instead of trying to solve his financial problems in a business like way, he went to court and sought to stop the foreclosure through the lack of jurisdiction of state law on an Indian reservation. The courts did not agree with the young Indian man and permitted the foreclosure because the home was owned patent-in-fee and was taxable. The outcome of this incident created a tremendous amount of ill feelings between Indians and non-Indians. This effort to evade payment hurt the credit of all Indian people who had established bank credit in the state of Montana. This is especially difficult on Indian reservations in the state of Montana because the entire reservation is checker-boarded. That is, non-Indians own pieces of land in fee adjacent to their Indian neighbors who live on non-taxable trust land. The jurisdiction of such a situation is extremely controversial because the non-Indian people are goverened strictly by state law while the Indian people are goverened by tribal law and federal law. The two types of administration are extremely different and conflict with each other in a great many areas. Conflicts of this type are the causes of most of the race problems in Indian communities. Trust property and trust land still can remain tax exempt under state jurisdiction of law and order.

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CIVIL RIGHTS BILLS (Indian Truth, Winter 1965)

Senator Erwin, Chairman of the Civil Rights Committee in the United States Senate has introduced nine laws into Congress to protect the Civil

Rights of Indians because Indians are discriminating against themselves due to the lack of law and order codes on Indian reservations. Several cases of rape go unpunished because of the lack of law to protect Indian people. One of the Erwin proposals will make rape a major crime which can be punished in federal courts. This demand for Civil Rights comes from Indian people themselves and does not have its sponsorship among non-Indians.

When introducing the measures referred to above Senator Ervin said in part...."In introducing these proposals, I wish tonote that these bills should not be considered as final solutions to the many serious constitutional problems confronting the American Indian. Rather, it is anticiapted that the language in some of these proposals may be revised and concepts clarified as the Senate deliberates these matters. The substance of these bills, however, is exceedingly important if we are to provide to our Indian citizens the right and protections conferred upon other American citizens."

Hearings on these proposed measures will be conducted by the Subcommittee on Constitutional Rights. Space does not permit either detailed presentation of these measures or our comments on their merits. Generally their purposes as stated by Senator Ervin seem good. Undoubtedly, as he has suggested there will need to be revisions and possibly definite changes in some of the bills. A brief statement of the purposes is given in the report of the Subcommittee as follows:

1. The Constitutional rights and protections conferred upon American citizens should be made applicable to American Indians in their relationship with their tribal governing bodies.

2. The Attorney General of the United States should be authorized to investigate complaints alleging that an Indian has been deprived of any rights conferred upon citizens by the Constitution. He also should file a written report with Congress and the Secretary of the Interior each year showing the number of complaints filed and the action taken thereon.

3. To provide Indian citizens living on reservations a more adequate system of justice, the subcommittee recommends that a criminal model code for the courts of Indian offenses be drafted by the Secretary of the Inte Interior and submitted to Congress.

4. To assure that Indian Tribes can obtain legal representation when needed, the subcommittee recommends that a time limit be established for the Secretary of the Interior to approve contracts between attorneys and Indian tribes.

5. An Indian deprived of a constitutional right in a criminal proceeding before an Indian court should be authorized to appeal the conviction to a U.S. District Court.

6. The consent of the United States should be given to any state to assume in a whole or in part, civil and/or criminal jurisdiction over Indian reservations, provided that the Indian tribes involved consent. The Congress should further authorize the United States to accept a retrocession by any State of any civil or criminal jurisdiction. This is sometimes referred to as piecemeal jurisdiction.

7. The Document entitled "Indian Affairs, Laws, and Treaties," which was published originally as Senate Document No. 319 in the 58th Congress, should be revised by the Secretary of the Interior to include as of July 1, 1965, all treaties, laws, Executive Orders, regulations and other matters relating to Indian affairs. Such document should be printed by the Government.

8. An accurate compilation of all the opinions of the Solicitor of the Department of the Interior relating to Indians should be prepared and such compilation should be printed by the Government.

9. The United States should be given concurrent jurisdiction with the various States over certain criminal offenses committed by non-Indians against non-Indians in Indian country.

10. The offenses over which the Federal Government has exclusive jurisdiction in Indian country should be expanded to include "aggravated assault" Such offense should be defined according to the law of the State.

LAW AND ORDER BILLS IN CONGRESS

S. 961 That any Indian tribe shall be subject to the U.S. Constitution in the same way that the United States Government is subject to it.

To provide that any Indian tribe, in exercising its powers of local self-government, shall be subject to the same limitations and restrictions as are imposed by the Constitution upon the United States Government.

S. 962 To Authorize appeal of a criminal action from an Indian court to a U.S. District Court for trial.

To allow an appeal from a tribal court decision and a trial in the Federal District Court in any criminal case where the person convicted claims that he has been deprived of a constitutional right. The one appealing is entitled to have it tried over again by judge and jury. If the accused is convicted he is subject to the same punishment that could have been imposed by the tribal court.

S. 963 Authorizing the Attorney General to investigate complaints of Indians alleging that they have been deprived of constitutional rights.

If the investigation shows that the Indian has been deprived of his constitutional right, the Attorney General shall bring such criminal or other action as he thinks appropriate to secure such right to such Indian.

S. 964 Establishes proper qualifications for Indian court judges and provides educational classes to train judges.

This law directs the Secretary of the Interior to prepare a model code of law for Indian reservations including guarantees for constitutional protections for use by tribal, state and federal courts in Indian offenses.

S. 965 Gives the U.S. jurisdiction over crimes committed by non-Indians against non-Indians on Indian land.

This law will give the Federal Government concurrent jurisdiction with the states over criminal offenses by non-Indians against non-Indians within

Indian reservations. Last year, rape was committed on the Navajo Reservation which involved two non-Indians. The State would not handle the case because the crime occurred on an Indian reservation, and the FBI wouldn't handle it because they were non-Indians. This bill would cover such cases so that either the State Police or the FBI could take charge and the criminal would not go free.

S. 966 Requires CONSENT OF TRIBES before state, civil and criminal jurisdiction can be assumed over a reservation. An amendment of P.L. 280 will be necessary.

Senate Bill 966 gives consent to the Federal government, with the States consent to handle cases where offenses are committed by or against an Indian in Indian country. States like New Mexico, which do not have authority (jurisdiction) over Indian country, would be allowed to amend their constitution so as to have authority over Indian country, and if the tribe consented, the State could handle civil and criminal cases involving Indians on the reservations, but not give the State any rights over tribal land, water rights, or hunting or fishing rights, but unly civil and criminal cases.

S. 967 Makes aggravated assault part of the U.S. Code.

Refers to tribal courts, which can handle only misdeameanors, such as drunkenness, peace disturbance, and so on. The serious crimes are handled by Federal officials. This bill would allow tribal courts to sentence offenders to as much as six months in jail, but no more. The serious crimes, such as the eleven major crimes, called felonies would call for sentences of more than six months. There are now eleven major crimes which would include any type or degree of assault, (aviolent attack) which is punishable by imprisonment for more than six months. Such an offense would be punished in accordance with the laws of the State in which it was committed. This bill would amend the law so that serious crimes committed within Indian country could be prosecuted in Federal courts.

S. 968 Limits the time for approval of lawyers' contracts to 90 days, after which time approval shall be deemed to have been given.

Gives the Secretary of the Interior 90 days in which to either approve or disapprove a lawyer's contract with a tribe. Instead of keeping it for a year or more, he has to act on it, and if he doesn't take action within 90 days, the contract will be considered approved.

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1963 MONTANA SESSION LAWS - - CHAPTER 81

An Act to provide for the assumption of Criminal and/or Civil jurisdiction over the Confederated Salish and Kootenai Indians and their Reservation and land as authorized by Federal Laws, providing the time and the method thereof, and the Duty of the Governor with respect thereto.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The State of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state

in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session.)

Section 2. Whenever the governor of this state shall receive from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes, community, band or group of Indians in this state, a resolution, expressing its desire that its people and lands be subject to the criminal and/or civil jurisdiction of the state of Montana to the extent authorized by federal law and regulation, he shall issue within sixty (60) days a proclamation to the effect that such jurisdiction shall apply to those Indians and their territory, or reservation in accordance with the provisions of this act; Provided, that he shall not issue such proclamation until such resolution has been approved in the manner provided for by the charter, constitution or other fundamental law of the tribe or tribes, if said document provides for such approval; provided further that he shall not issue such proclamation until there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

Section 3. Sixty (60) days from the date of issuance of the proclamation of the governor as provided for by Section 2 of this act, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and the criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

Section 4. Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing or the control, licensing or regulation thereof.

Section 5. Nothing in this act shall deprive, the Indian tribe, band or community from carrying on its age-old tribal dances, feasting or customary Indian celebrations or in any way try to destroy the Indian culture.

Section 6. Any Indian tribe, community, band or group of Indians that may consent to come within the provisions of this act may, within two (2) years from the date of the governor's proclamation, withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within sixty (60) days after receipt of such resolution the governor shall issue a proclamation to that effect.

APPROVED FEBRUARY 27, 1963

PROCLAMATION

WHEREAS, Chapter 81, Montana Session Laws of 1963, provides for the extension of criminal and civil jurisdiction of the State of Montana to the extent authorized by federal law and regulations upon the Confederated Salish and Kootenai Indian Tribes; and

WHEREAS: The act requires the Proclamation of the Governor of the State when the Tribal Council has created the proper authority and requested such Proclamation from the Governor of the State; and

WHEREAS, Such proper documents have been prepared entitled "Tribal Ordinance 40-A (Revised)" under date of May 5, 1965; and

WHEREAS, Approval has been secured from the Counties of Sanders, Lake, Flathead and Missoula; and

WHEREAS, It appears all things required in Chapter 81, Montana Session Laws of 1963, have been substantially completed;

NOW, THEREFORE, By the power vested in me, as Governor of the State of Montana, I, Tim Babcock, hereby proclaim that criminal and civil jurisdiction of the State of Montana and its subdivisions does extend to The Confederated Salish and Kootenai Tribes as expressed in their approved Ordinance No. 40-A (Revised), and Chapter 81, Montana Session Laws of 1963, and I further declare that sixty days from the date of October 8, 1965, such criminal and civil jurisdiction as previously described shall be in full force and effect.

SEAL

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Montana to be affixed. DONE at the City of Helena, the Capital, this 8th day of October, in the year of our Lord, One Thousand Nine hundred and Sixty-five.

TIM BABCOCK, GOVERNOR

Frank Murray, Secretary of State

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STATE TAKING CIVIL, CRIMINAL JURISDICTION
AT JOB CORPS CAMP ON FLATHEAD RESERVATION

Great Falls Tribune, Dec. 8, 1965

Montana took over criminal and civil jurisdiction on the Flathead Indian Reservation Tuesday where a federal Job Corps Camp is opening January 5, 1966. Local authorities are optimistic they can handle any problems. But Lake County Atty, Richard P. Heinz said he will count on the federal government to help with the federal camp and the state to help with a youth forest camp planned in the Swan Lake area.

Extension of state jurisdiction to the reservation was asked by the Confederated Salish and Kootenai Tribes as provided by a 1963 Montana law. In proclaiming the state's new jurisdiction to the extent authorized by federal law, Babcock explained the tribes may withdraw their consent within two years by resolution. Approval of the action was obtained from

the counties of Sanders, Lake, Flathead and Missoula. The law protects Indian property, water, hunting, fishing and trapping rights, and does not affect any rights to carry on age-old tribal feasts or celebrations.

"We anticipate an increase in responsibilities. It definitely will come," said Heinz. "But we will follow a policy of deferring to the U.S. attorney any cases he may wish to handle." Reservation Supt. P. T. LaBreche said he understood there would be concurrent jurisdiction--- either the state or the federal government would be empowered to act.

Originally the Job Corps Camp was to open Dec. 1 with the first group of boys arriving Dec. 10. There were some delays in construction and officials said they decided to wait until after Christmas to bring in any of the 16-21 year old youths. The first group of 25 will arrive January 17. Each week another 25 will arrive until the camp's planned enrollment of 200 is reached. LaBreche said he had no advance word of where the boys would come from. "All over the nation, we assume," he said. LaBreche said no problems were anticipated with the change of jurisdiction on the reservation or with the control of the boys at the Job Corps Center. "We have had good cooperation from Lake County and from the people at Ronan. They have been handling some of our juvenile cases for some time." Heinz said the county was limited by statute to a set number of deputy sheriffs and that the Swan Lake area had limited communications, unstable power and inadequate telephone service. "We were reassured all these things will be taken care of. Five more members of the camp staff will be qualified to be deputized if they are needed and they will be on the State's payroll." Heinz said the state promised to install a direct shortwave radio connection between the camp and the sheriff's office in Polson. He said Pacific Power and Light Co. planned to improve electric service and a telephone company spokesman promised service would be expanded. "We were satisfied our demands, or maybe I should say our requests, will be met," Heinz said.

REMARKS OF ASSOCIATE JUSTICE, STANLEY M. "LARRY" DOYLE OF THE MONTANA SUPREME COURT AT THE INDIAN LAW SEMINAR AT BILLINGS, MONTANA, May 21, 1966.

The Northwest Ordinance preceded the adoption of the Constitution of the United States by two years. The United States had adopted as one of its set of principles, the Declaration of Independence and it crystallized into what later became the Bill of Rights. The long evolution of legislation and practice in England which resulted in the concept, a human being is an integer, a unit, a being, a personality, an individual, and the best interests of society demand the opportunity for the best development of that individual.

The Northwest Ordinance undertook to protect the rights of the Indian both collectively and individually in the soil and the land which they occupied. The Northwest ordinance was the governing document, the constitution you might call it, of all the western territory between the Mississippi River and the Appalachian Mountains and the area North of the Ohio River.

The logic which is set forth in the Northwest Ordinance was not original with the United States Congress. The protection of Indian rights to their lands came to France from Spain when North American lands were transferred. The Spanish people obtained this philosophy from a statement of principles issued by the Vatican for dealing with Indian problems back in 1580. History shows that it has been necessary to enact ordinances quite often to protect Indian land rights. The old Spanish law placed more severe penalties against Spanish intrusion of Indian rights than for similar intrusion against their own people. The French adopted the same approach to Indian land problems and they became a part of the law of the United States through the Louisiana Purchase Treaty.

There are 400 treaties between the United States Government and Indian tribes. There are 4000 federal statutes to apply these treaties and make administrative decisions in regard to these treaties. The Spanish influence determines many of the decisions in regard to Indian rights. The result is a strange inadequate patchwork for the administration of Indian lands.

In recent years, criminal jurisdiction has been administered on Indian reservations under Sec. 1153 of the Title 18 also known as the 11 major crimes law which reserves for the United States Government total jurisdiction for the 11 major crimes by Indian people within the boundaries of an Indian Reservation or Indian country. Other crimesvery often classed as misdemeanors are reserved for the tribal council or local reservation jurisdiction.

The Montana state jurisdiction in Indian Reservations is controlled by the Enabling Act which provided for the Constitution in the State of Montana. This act specifically states that the Constitution does not apply to military reservations nor Indian Reservations as follows:

THE ENABLING ACT FOR MONTANA, passed February 22, 1889, an Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments to be admitted into the Union on equal footing with the original states, and to make donations of public lands to such states.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

#1, 2, 3 and 4, First----

Second, That the people inhabitingsaid proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; ----"

The Enabling Act may be seen as an Act designed for the times. To enable the states to organize, they were granted certain sections of the public domain. The Federal Government

recognized its obligation to stand between the native Indian population and the oncoming home steaders and settlers. The native Indian population had been, to a very large degree, divest of its former means of livelihood and rendered dependent upon the Federal Government for its subsistence. Many of the Indians of this section of the country were still very resentful and hostile. The homesteaders and settlers were seen as important in the expansion and life of the nation. They were hungry for land, whether land was reserved to Indians or not. If the Federal Government had not intervened in behalf of the Indian and peace and order there would have been continuing hostilities and the Indian would have been further exploited. It was this context that the Federal Government in writing the Enabling Act set as the Indian and the Reservation lands from the application of State Law. It was not that the Federal Government assumed all of the authorities in relation to Indians on reservations which otherwise were the State's. There were whole areas of law which, it came to be recognized, remained with the tribes and did not pass to the Federal Government. This concept of tribal sovereignty, the right of a tribe to govern its own internal affairs, was described in Worcester v. Georgia, (1832); 6 Peters 515, 8 L.Ed 483. This doctrine was seen in the one extreme in the case titled Ex parte Crow Dog, 109 U.S. 556. The effect was so repugnant to the sensibilities of people that the Congress acted in 1885. 23 Stat. 385, to assume jurisdiction over certain crimes if committed among Indians on reservations. Thus, the powers of tribal sovereignity were curbed to this extent. This law now appears in 18 U.S.C. 1153, and in addition to the original crimes of murder, manslaughter, rape, assault with intent to kill, burglary, larceny, and arson, it includes robbery, incest and assault with a dangerous weapon. Other such laws include one covering embezzlement from tribal organizations was added in 1956, and the Switchblade Kife Act, P.L. 623, approved August 12, 1958.

More recently there was the Iron Crow, et al. v. The Oglala Sioux tribe, 321 Fed. 2d 39, which in a criminal case, upheld the validity of the Indian court as differentiated from the State court system, or the Federal court system. Later, another case, Lee v. Williams, recognized the validity of the Court of Indian Offenses in a civil matter.

In a sense the pendulum has swung from a willingness to allow the Indian tribes on their reservations to rule themselves according to their own custom, even to the extent of murder and denial of due process, to a taking over of regulation of certain crimes by the Federal Government, and later recognition of Indian courts as valid courts of law.

For the perspective of what is referred to as the jurisdictional problem, perhaps it is appropriate to consider jurisdictional lines generally accepted as pertaining to the enforcement and application of criminal law, then proceed to consideration of some special areas of concern.

It is in the field of criminal law in which there is perhaps the most common agreement as to where the jurisdictional lines are. This is probably because the tribes, and the states and the Bureau of Indian Affairs have been dealing with these problems over an extended time and because there has been relatively little change in the procedures and means we use to deal with these problems.

Generally it can be said that the right and responsibility for enforcing the law among Indians on the reservation has remained with the tribes. The jurisdiction of the Indian court extends to [illegible] the reservation. The State courts have jurisdiction over Indians and non-Indians alike when the offense is committed off the reservation. Its (State) authority extends only to the boundaries of the reservation when Indians are involved. It reaches onto the reservation where non-Indians are involved. The tribes and States or counties offer reciprocal sevices in apprehending fugitives or in serving process. The Federal Government on its part has jurisdiction in certain offenses involving federal property, interstate commerce, mail, etc., where Indians as well as non-Indians on or off the reservation are involved. Add to this the fact that by Congressional action the Federal Government may take jurisdiction when certain specified crimes have been committed or when crimes by Indians against non-Indians or by non-Indians against Indians on the reservation are involved.

In this connection, Mr. William Benge, Chief, Branch of Law and Order said before the National Congress of American Indians, December 15, 1959: "Many tribes have seen fit to abolish Indian custom marriage and divorce among tribal members and to require the members to comply with the laws of the State in such matters. Resolutions or ordinances by a tribe in this respect have been said simply to be a divestment of the tribal court of the power to act in relation to marriage and divorce. Until recent years no question has been raised as to the authority of some State courts to act with respect to Indian marriages and divorces when the parties come before the courts on their own motion. It is becoming increasingly apparent, however, that this is a matter of grave concern to both the states and the tribes because two recent court decisions have expressed the direct view that a State court is without jurisdiction to grant divorce where both parties to the action are Indians residing on a reservation." (White v. District Court of Montezuma County, Colorado, and Jim v. Jim in Yakima County, Washington. Neither was then reported.)

The eleven major crimes are murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, robbery, burglary, larceny, trespass.

The federal government and the federal courts have assumed jurisdiction of the above crimes. The U.S. Senate Civil Rights Committee has been requested to initiate legislation which would make aggravated assault a federal crime. The past interpretation has been that assault was a tribal offense if the man was not killed in the fracus. Some of the fights have resulted in broken bones and crippled for life without any serious punishment because no competent court of law had jurisdiction. This new proposal if enacted would place aggravated assault under the jurisdiction of the federal courts.

Law and order on Indian reservations was originally based on Indian custom and tribal law. It was commonly called home rule. As the non-Indian settled on reservations problems arose in the administration of affairs and the only limitations of the early days were prescribed by Congress. The status of the reservations were similar to that of counties, states and towns and were integral parts of the governmental structure of the nation. The roots of this government lie in international law, treaties of the national government and Supreme Court decisions. Chief Justice John Marshall recognized them as distinct independent and separate political communities. Congress has the authority to abolish tribal government by law but it has never done so except by treaty, mutual agreement or by plebiscite. The new termination legislation however, gives Congress more power and has changed the old policy.

Congress controls the enabling act and P.L. 280-83rd Congress, Chapter 505, First Session--H.R. 1063, grants state criminal and civil jurisdiction over Indians in Indian country as follows:

Section 6 says: "Notwithstanding the provisions of any Enabling Act for the admission of a State , the consent of the United States is hereby given to the people of any state to amend where necessary, their state constitution of existing statutes, as the case may be, to remove any legal impediment to the assumption of criminal or civil jurisdiction in accordance with the provisions of this act; Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any State until the people thereof have appropriately amended their constitutions or statutes as the case may be."

Section 7: "The consent of the United States is hereby given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both as provided for in this Act, to assume jurisdiction at such time and such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

As the lawyer for the relator in the Montana Supreme Court opinion, State ex rel. Irvine v. District Court, 125 Mont. 398, 239 P. 2d 272, held that no Montana Court had jurisdiction over enrolled and allotted Indian people residing on tax-exempt Indian lands on a reservation where a crime was alleged under the ten major felonies Act, Title 18, Sec.'s 1153 and 3242, U.S.C.A., until such jurisdiction had been granted by legislature. This lack of jurisdiction

by Montana state courts applies only to Indian people with legal residence within the boundaries of an Indian reservation or in Indian country. The Tribal jurisdiction over its own law and order comes from early United States Supreme Court opinions that Indian people were self-governing. The early courts held that an Indian tribe was a distinct independent, political body possessing all the powers of self-government of any sovereignity except those powers that have been extinguished by Federal law. Any repeal of any tribal powers can be accomplished only by the Congressional statute or treaty. The public is not generally aware that Civil and Criminal law, including questions of tribal membership, tribal government, tribal property, domestic relationship and inheritance are controlled by tribal authorities instead of state law.

The Indian Reorganization Act of 1933 has changed the outlook of the federal government. The Indian people are encouraged to participate in their own government and are developing increased skill in democratically controlled administration of their own affairs. They are borrowing many of the techniques used in non-Indian society which seem meaningful to them and the progress made in the ability to govern themselves during the past 33 years is commendable and remarkable among many of the tribes and reservations. The transition from federal control to state control is beginning to take form and a trend is becoming evident.

Federal restriction over jurisdiction never has existed, in the State of Oklahoma where there are no reservations, as such, and all legal jurisdiction is under state law and in state courts. During the year 1953, the states of California, Wisconsin, Minnesota, Nebraska, and Oregon also accepted state jurisdiction for Indian people. The area of greatest benefit to Indian people from state jurisdiction is in state records and control over marriage, divorce, adoption of children and regulated foster home care. Quite often State courts hold that marriage under Indian custom is not legally binding. There are no federal laws covering marriage and this accounts for many broken marriages among Indian people. The same holds true in regard to divorce. There are no federal divorce laws. Divorce in a state court by Indian people with legal residence on an Indian reservation would not have a good legal foundation if contested in court. The Federal government does not have legal framework for adoption procedure. For three years the parents of a Blackfeet boy have tried to arrange for an adoption of a little boy through Montana courts but had no success until both families moved away from tax-exempt lands on Indian reservations and off the reservation before any state court would accept jurisdiction.

The most valuable portion of state law in marriage, divorce and adoption is the official record that is kept on the state level. Recently the Office of the Montana Indian Coordinator was called upon to provide the official date of birth for a lady in California. She claimed Indian blood and birth in Montana. This record was necessary to obtain welfare and hospitalization in California. There was no record available on the Flathead Reservation and no record in the State Bureau of Vital Statistics. Dozens of problems arise each year becuase of the lack of adequate record keeping for Indian people on reservations.

The statement has been made by attorneys in Indian country and church personnel that this lack of legal jurisdiction over marriage, divorce and adoption contributes a great deal to the lack of sanctity in marriage among some of our Indian people. Divorce is sometimes arranged through tribal custom so that the mother may draw A.D.C. aid for children.

An Indian Treaty is on the same level in law as the Constitution of the United States. The following decision from the United States Court of Appeals is a good illustration of the tremendous importance of an Indian Treaty in Indian law: 272 F. 131, Native American Church of North America v. Navajo Tribal Council, No. 6146, November 17, 1959.

This case was an action to enjoin enforcement of an ordinance by the Navajo Tribal Council making it an offense to introduce Peyote into Navajo country. A bean known as peyote is used by the Plaintiff Church in connection with and as part of the religious ceremonies. The United States District Court for the District of New Mexico, Waldo H. Rogers, Jr. dismissed cause of action and plaintiff appealed the Court of Appeals, Huxman, Circuit

Judge, held that in the absence of constitutional provision or any law of Congress making first amendment application to Indian nations, Federal Court did not have jurisdiction of tribal laws or regulations even though they might have an impact to some extent on forms of religious worship.

The significance of this Court of Appeals Opinion becomes more apparent when State Law and Order enters into the problem. Indian people hesitate to give up this powerful position which they hold in the United States society. They do not fully realize however, their responsibility when they seek to protect this powerful position. They must maintain a standard of society which is acceptable. This probably is the greatest weakness in the Indian position of law and order. The trend in modern society requires that Indian people conform to reasonable acceptable community standards of law and order. The position of isolation of people of Indian blood is gradually disapperaing and the process of integration is progressing gradually in all areas. This process of integration includes living under a system of law and order which is uniform. Any time that there is segregation in an area like law and order the attitude of segregation spreads into other areas. Segregation always sows the seeds of discrimination and racial problems. These are problems which will confront the Indian people in the future in areas of law and order.

Juvenile delinquency is being recognized as a major problem in our newspapers, our current magazines and by our schools. The growth has been so rapid and so alarming that the problem has been called to the attention of our Congress. The F.B.I. in its reports to the people emphasized the alarming growth of teenage crime and the trend in this direction. Montana legislators recognized the overall problem in House Joint Memorial No. 10 during the 34th Legislative Session of 1955. The Congressional committees investigated juvenile delinquency on Indian reservations all over the United States during the summer of 1955. A report on these hearings was published by the 84th Congress 1st Session.

It is not the purpose of this report to develop a thesis that juvenile problems are greater on one Indian reservation that on other reservations in the U.S. There is just one purpose of this report and that is to call the attention of persons to the fact that there is a problem of delinquency on Indian reservations and that there is no well defined program to cope with this problem and try to offer some hope of correction.

One approach to the study of the problem should begin with an understanding of the vacuum that exists on Indian reservations in regard to Law and Order jurisdiction. Until some well defined and acceptable approach has been set up, this vacuum will exist and the area devoid of law will increase. The federal government does not have a criminal code to cover the area of crime.

The commitment of juveniles from Indian reservations with Indian heritage to the Miles City, Montana, Industrial School for Boys, has been carried on for several years. The jurisdiction of courts and state law has been overlooked because of an interpretation that this institution is a school and is not a penal institution. Someday this practice will be questioned in our courts. At the present time approximately 50% of the enrollment at the Miles City Industrial School consists of children with Indian blood. This is interesting because the Indian population in Montana is less than 5% of the total population. The cause of this situation has been explained by students of the problem in the fact that Indian people on reservations have never lived under the restraint of law and order which is found on the non-reservation areas of the state. Citizenship and community responsibility which is developed through constant living in an area where states law and order prevails is materially different from those communities where the everyday habits of living have been established through many years of non-conformity to state law and order.

The Montana Vocational School for Girls is located near Helena. The school has an enrollment of approximately 80 girls. The number of girls with Indian blood at the school fluctuates in the area of 50%. The cause of this tremendous impact from Indian children has been attributed to lack of experience of living under State law and order. There are

Many illustrations which tend to indicate that the problem of juvenile delinquency is more common among Indian people than among the non-Indian population.

The cost of law and order on Indian reservations is more than many states or counties are willing to assume. The State of South Dakota has refused to assume any jurisdiction on high ways through Indian reservations because the United States of America has not made proper provision for reimbursement to the State of South Dakota and the various counties for the added cost in connection with the assumption of this jurisdiction.

There are crimes which do not come under the state or federal law. These include trespass by non-Indian hunters and fishermen. The federal law covers this violation but tribal police and tribal courts are powerless to enforce the law against non-Indians because they do not have jurisdiction. Also tribal members are unfamiliar with law and courts. This is particularly true in areas with large full blood population.

The officers are being trained as fast as possible and judges desire more training. Most of the judges lack specific training in the quirks of the law which results in tragic mistakes. There is also a lack of decent sanitary jails which are fit to be habitable by human beings. There is also a lack of social workers and psychiatrists. Tribal judges must often decide juvenile cases where they must either let the defendant go or put him in jail with repeated criminals or drunkards. Tribal courts are not equipped to carry out a rehabilitation program common in non-Indian courts.

There are also many slipshod procedures in tribal courts, There is no right of appeal provided. The law and order problems on Indian reservations are social problems such as physical environment, low economic status, low social status, disintegration of the Indian community, change in cultural patterns and rapid shift in society. To these must be added the increased drinking problems and juvenile problems.

In the problem of juvenile delinquency the community has a great deal of responsibility. Many children drop out from school because of poor home environment and crowded living conditions with no privacy for study. Tribes might well consider keeping the school building open in the evening for study and youth activities. There is a lack of guidance services to place values on the high school diploma and college training. The judge has only one alternative to placing the juvenile in the company of adult criminals and that is to let him go. The juvenile problem is one of rehabilitation.

One of the biggest problems in state jurisdiction for Indian reservations is the cost. States hesitate to assume this additional burden and this additional cost and place this burden upon the tax payers of the state. Practically all state law enforcement is carried on through the office of the county sheriff. The office of the county sheriff is financed through personal and property taxes and the assumption of this financial burden results in increased taxes on the property owners. If various agencies are requesting state jurisdiction for Indian reservations, it will be necessary to provide funds for this increased activity from the federal level to replace taxes which have been lost through tax exempt Indian lands which have been placed in trust with the United States government.

The following is a brief comparison of the jurisdiction laws passed by legislatures in several states. The State of South Dakota assumes all jurisdiction of law and order on Indian reservations and does not provide for the consent of the Indian people. The law is quite brief and does not mention the protection of Indian people, their land rights, taxation, Indian ceremonials, and Indian cultures.

The Idaho Law assumes jurisdiction over law and order on Indian reservations in seven areas. The consent of Indian people is not required for these seven areas. Consent, however, is provided for the extension of law and order and civil jurisdiction in any area beyond the seven mentioned above.

The Washington law is quite similar to the Idaho law in that the state assumes jurisdiction law and order on Indian reservations in the seven areas mentioned above without requiring onsent of the Indian people. Extension of law and order into otherareas and civil rights is ade possible in the Washington law only through the consent of the Indian people. This, owever, applies only to the Yakima and Colville Reservations. Nine other Indian reservations n the state of Washington have requested and adopted state law and order. Several years ago he new jurisdiction law in the state of Washington did apply only to the Yakima and Colville Indian Reservations.

The Montana jurisdiction law extends state law and order to the Flathead Indian reservation only after the consent of these people which would be expressed in a resolution or ordinance to the Governor of the State of Montana.

The following states have been using state jurisdiction for several years with very little conflict: Minnesota, Wisconsin, Nevada, Nebraska, California, Oklahoma and Texas. There seems to be a definite trend towards state jurisdcition of law and order on Indian reservations in the United States.

The jurisdiction topic indicates that the Indian people accept state jurisdiction piecemeal. Such legislation has been introduced in the United States Congress and is being practiced in some atates. The meaning of such a topic includes permission for the Indian tribes to accept those portions of state jurisdiction which they feel contributes to their own well-being and to the solution of their own problems.

Such an approach to the problem is worth considerable study by the Indian people. Why do Indian people fear state jurisdiction? This is a topic worthy of a great deal of study.

Two years ago a young man with a small degree of Indian blood mortgaged a house which he had to obtain funds to build a bowling alley. This man was not a good financier and the bank sought to foreclose the mortgage after a two year delinquency in payments. Instead of trying to solve his financial problems in a businesslike way, he went to court and sought to stop the foreclosure through the lack of jurisdiction of state law on an Indian reservation. The courts did not agree with the young Indian man and permitted the foreclosure because the home was owned patent-in-fee and was taxable. The outcome of this incident created a tremendous amount of ill feelings between Indians and non-Indians. This effort to evade payment hurt the credit of all Indian people who had established bank credit in the State of Montana. This is especially difficult on Indian reservations in the State of Montana because the entire reservation is checker-boarded. That is, non-Indians own pieces of land in fee adjacent to their Indian neighbors who live on non-taxable trust land. The jurisdiction of such a situation is extremely controversial because the non-Indian people are governed strictly by state law while the Indian people are governed by tribal law and federal law. The two types of administration are extremely different and conflict with each other in a great many areas. Conflicts of this type are the causes of the race problems in Indian communities. Trust property and trust land still can remain tax exempt under state jurisdiction of law and order.

Montana took over criminal and civil jurisdiction on the Flathead Indian Reservation where a federal Job Corps Camp opened January 5, 1966. Local authorities are optimistic they can handle any problems. The Federal Government is to help with the federal camp and the state to help with a youth forest camp planned in the Swan Lake area.

Extension of state jurisdiction to the reservation was asked by the Confederated Salish and Kootenai Tribes as provided by a 1963 law. In proclaiming the state's new jurisdiction to the extent authorized by federal law, Governor Tim Babcock explained, the tribes may withdraw their consent within two years by resolution. Approval of the action was obtained from the counties of Sanders, Lake, Flathead and Missoula. The law protects Indian property, water, hunting, fishing and trapping rights, and does not affect any rights to carry on age-old tribal feasts or celebrations.

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In conclusion, if you will make a careful survey of all the pertinent facts over the years of the white man dealing with his red brother, you will inevitably conclude that the white man appropriated the Indian's land with force and forgery and payment for these lands to a large degree was in rot-gut whiskey and venereal disease.